**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO.6858 OF 2014**

Kawarsing Bansi Rathod,
Age-43 years, Occu:Agri.,
R/o-Girnar Tanda,
Tq. & Dist-Aurangabad.

**...APPLICANT**

**VERSUS**

1) Naeem Shahabuddin Shaikh,
Age-33 years, Occu:Advocate,
R/o-Indra Complex, Bajrang Chowk,
CIDCO, N-6, Aurangabad,

2) The State of Maharashtra,
Through Investigation Officer,
Chikalthana Police Station,
Aurangabad.

**...RESPONDENTS**

...

Mr.G.J. Pahilwan Advocate for Applicant.
Mr. Shaikh Mazhar A. Jahagirdar Advocate
for Respondent No.1. .
Mr.P.S. Patil, A.P.P. for Respondent No.2.

...

**CORAM: A.I.S. CHEEMA, J.**

**DATE : 26TH NOVEMBER, 2015**

**ORDER :**

1. Heard learned counsel for both sides.

2. It is stated for the Applicant-original complainant that complainant had sold Gut No.4/5 to Respondent No.1 - accused and one Sachin vide Sale Deed No.960 of 2011 and against that transaction the accused had issued cheque of Rupees Two Lakhs, which bounced. According to the counsel for the Applicant the trial Court did not correctly appreciated the evidence. According to him, the consideration which was shown in the sale deed of Rupees One Lakh Twenty Eight Thousand was received but there was further understanding between the complainant and accused whereby against the transaction the accused had issued cheque of Rupees Two Lakhs and that cheque bounced. Learned counsel referred to the copy of notice dated 4th June 2011 which was issued by the counsel for Respondent No.1 - accused and in which

notice it is admitted that for the transaction of the concerned sale, the cheque was issued.

3. Against this, the learned counsel for Respondent No.1 - accused submitted that the copy of notice which is referred by the learned counsel for Applicant, at Exhibit B in the Petition, was not proved in the trial Court. According to the learned counsel, even if the notice was to be referred, it shows that there was suppression of facts and the complainant had transferred the land which was basically Gairan land and which he could not have transferred and thus the transaction was cancelled and thus the encashment of cheque was with-held. According to the learned counsel the trial Court rightly appreciated the evidence that was brought before the Court.

4. Going through the material on record, it is seen that the trial Court considered the sale deed by which it is stated that consideration was

of Rs.1,28,000/- and found from the sale deed that the amount had been received was recorded in the sale deed and thus the trial Court found that there could not have been reason for another cheque of Rupees Two Lakhs and thus, discussing the evidence, the trial Court acquitted the accused.

5. If Exhibit B now filed with this Application is considered, it shows the contents of hiding the real transaction from the mother and sister of the complainant and the notice claims that land concerned was Gairan land, which could not have been sold and there was cheating. Even ignoring Exhibit B, going through the reasonings recorded by the trial Court, from the material which was brought before the Court, the view taken is possible view of the evidence and I do not find that this is a fit case to interfere with the acquittal.

6. There is no substance in the Application. the Application is rejected.

**[A.I.S. CHEEMA, J.]**

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