

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.104 OF 2013

M/S.ASARCO STEEL PVT. LTD.)...APPLICANT

V/s.

**M/S.PARAS INDUSTRIAL CORPORATION)
AND ANR.)...RESPONDENTS**

Mr.Kezer Kharawala i/b. R.K.Associates, Advocate for Applicant.

Mr.Dilip Shinde i/b. Mr.Amol Mhatre, Advocate for Respondent No.1.

Mrs.S.V.Gajare, APP for the Respondent - State.

CORAM : ABHAY M. THIPSAY, J.

DATE : 9th MARCH 2015.

P.C. :

1 Heard Mr.Kezer Kharawala, learned counsel for the applicant. The applicant is the original complainant. He is seeking special leave to file an appeal from the order of acquittal of respondent no.1, as passed by the Magistrate. It appears that this application for leave is pending before this court since March 2013, and during the pendency thereof, parties have decided to

arrive at a compromise. It appears that consent terms have been filed on 17th October 2013. It is now submitted that respondent no.1 has committed default in paying the installments as agreed by Clause (10) of the consent terms.

2 Undoubtedly, the consent terms and the said clause indicate that in the event of default in payment of installments by respondent no.1, the judgment of acquittal recorded by the learned Magistrate shall stand quashed and set aside and this court would sentence respondent no.1 by holding him guilty. However, such a course cannot be legally adopted, despite agreement of the parties. In the circumstances, however, the proper course would be to grant leave to appeal and admit the appeal.

3 Leave granted.

4 The application be treated as 'Memo of Appeal' and be numbered accordingly.

5 The appeal is admitted.

6 Respondent no.1 shall execute a personal bond in the sum of Rs.25,000/- before the trial court within a period of six weeks from today.

7 The appeal be listed for 'Final Hearing' in due course.

8 Liberty to either of the parties to move the court for getting a date for 'Final Hearing' fixed, after the receipt of record and proceedings.

(ABHAY M. THIPSAY, J.)