

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.493 OF 2011

MR.ANIL DATTATRAYA TAWARE)...APPELLANT

V/s.

M/S.D.K.BUILDERS & DEVELOPERS & ANR.)...RESPONDENTS

Mr.B.S.Phad, Advocate for the Appellant.

Mr.S.S.Kulkarni, Advocate for Respondent No.1.

Ms.Anamika Malhotra, APP for the Respondent - State.

CORAM : ABHAY M. THIPSAY, J.

DATE : 11th FEBRUARY, 2015.

P.C. :

1 Though Mr.B.S.Phad, the learned counsel for the appellant, and Mr.S.S.Kulkarni, the learned counsel for respondent no.1 were fully heard, and though they advanced a number of contentions, both agree before me that, the impugned order of

acquittal cannot be sustained, and that, the matter needs to be remanded back to the learned Magistrate for proceeding further with the trial, by giving an opportunity to both the parties to adduce further evidence in the case.

2 It is submitted by the learned counsel for respondent no.1 that, among other things, the trial court may also be required to consider whether the Charge, as framed, is required to be modified or altered, in any manner, keeping in mind the legal position. It would be open for respondent no.1 to urge before the trial court accordingly.

3 After considering the facts of the case, the impugned judgment, and the agreement of the learned counsel for the parties on the unsustainability of the impugned judgment and order, the appeal is disposed of as follows :

i) The Appeal is partly allowed.

ii) The impugned order is set aside.

iii) The matter is remanded back to the learned Magistrate for proceeding further with the trial by giving an opportunity to the complainant to adduce further evidence.

iv) Needless to say, that the Magistrate shall also give an opportunity of adducing evidence to respondent no.1, if so desired.

v) The learned Magistrate shall, decide the matter expeditiously and in accordance with law.

vi) Record and Proceedings be sent back forthwith.

(ABHAY M. THIPSAY, J.)