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

CRIMINAL APPLICATION NO. 76 OF 2015

Shri. Nandlal Manakchand Sharma,
Age: 48 years, Occu: Service,
R/o R.T. Kabre Vidyalaya,
Erandol, Tq. Erandol,
Dist. Jalgaon

..APPLICANT

VERSUS

Anant Kashinath Sapkale,
Age: Major, Occu: Service,
R/o Union Bank Colony,
Behind Kalabhuvan, Zilha Peth,
Tq. and District Jalgaon

..RESPONDENT

Mr S.V. Munde, Advocate holding for Mr K. C. Sant, Advocate for
applicant;
Mr A. G. Talhar, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 10th March, 2016

ORDER :

Heard respective Counsel.

2. The present applicant moved Summary Criminal Case No.1671 of 2006 before Judicial Magistrate First Class, Erandol, for offence punishable under section 138 of the Negotiable Instruments Act against the respondent. Learned Magistrate acquitted the respondent-accused by judgment and order dated 20th November, 2014. Thus, the present application for leave to appeal.

(2)

3. Learned Counsel appearing on behalf of the applicant submits that even if the evidence brought on record by the complainant's witness is discarded, still the fact remains that the indemnity bond coupled with the cheque has to be read down and interpreted in favour of the applicant-complainant, in view of presumption under the provisions of the Negotiable Instruments Act. He has invited my attention to the observations made by the Magistrate discarding the said submission.

4. Mr Talhar, learned Counsel appearing on behalf of the respondent would submit that the learned Magistrate has considered all facets of the complainant's complaint and the defence raised. According to him, it is the complainant's own witness who has not supported the case. According to him, there is hardly any material on record to grant leave to appeal.

5. With the assistance, I have perused the judgment and order of acquittal. It is noted that the complainant's witnesses C.W. 4 and C.W. 5 have deposed contrary to the claim put-forth by the complainant in the complaint. Thus, the presumption of issuance of cheque for an admitted debt was rightly appreciated and considered against the present applicant-complainant.

6. In view thereof, in my opinion, no case for grant of leave is made out. Thus, leave is refused. In the result, Criminal Application stands rejected.

(N.W. SAMBRE, J.)

amj