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

CRIMINAL APPLICATION NO.2713 OF 2014

Mohan s/o Damodhar Ranade,
Age : 54 yrs, Occ. Ex-service,
R/o Kumbharwada, 2/10/78,
Aurangpura, Aurangabad

..APPLICANT
(Orig. Complainant)

VERSUS

Ashok s/o Ramnath Kakde,
Age : Major, Occupation : Service,
R/o Kakade's Wada,
H. No.4/202, Anguribag,
Aurangabad

..RESPONDENT
(Orig. Accused)

Mr C.V. Thorat, Advocate, holding for Mr A.R. Kawade, Advocate for applicant;
Mr G.J. Pahilwan, Advocate holding for Mr R.V. Gore, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 16th March, 2016

ORDER :

This is an application by the applicant-complainant under section 378 (4) of the Code of Criminal Procedure, for grant of special leave to appeal, for challenging the judgment and order of acquittal rendered by learned Judicial Magistrate First Class (Court No.4), Aurangabad on 4th January, 2014, in Summary Criminal Case No.6725 of 2011.

2. The aforesaid criminal case was initiated by the applicant - complainant under section 138 of the Negotiable Instruments Act, for

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dishonour of cheque of Rs.80,000/-, issued by the respondent – accused.

3. It is the case of the applicant that the respondent had entered into an agreement of sale of plot and as such, the applicant had paid him consideration of Rs.80,000/-. Since the property was in the name of mother of the respondent and as she had refused to execute the sale deed, the respondent had issued the cheque in question, in favour of the applicant, towards refund of the amount of consideration of Rs.80,000/-. It is claimed that the said cheque was dishonoured and as such, summary trial case came to be initiated.

4. According to the learned Counsel appearing on behalf of the applicant, the learned Magistrate, without considering the presumption under the provisions of the Negotiable Instruments Act, has committed an error of law and ordered acquittal of the respondent. He would then invite my attention to the details of the cheque and issuance of notice under section 138 of the Act, so as to establish the case of the applicant. According to him, on reading of the evidence of the complainant, it can safely be inferred that the cheque was issued towards repayment of the consideration that was received by the respondent towards sale of the plot.

5. The application is opposed by the learned Counsel appearing on behalf of the respondent-accused on the ground that the learned Magistrate has considered all the facets of the matter and has noted that at the behest of the applicant, no case for offence punishable under section

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138 of the Negotiable Instruments Act was made out.

6. With the assistance, I have perused the impugned judgment of acquittal and the evidence of the witnesses. The complainant was examined at Exh.14 on 28th November, 2012, however, in view of summary proceedings and change in the Presiding Officer, his fresh examination-in-chief was tendered on 26th September, 2013 and was cross-examined on 10th October, 2013.

7. The respondent-accused examined himself at Exh.46 and his witness Rajendrasingh at Exh.40. In view of the evidence at Exhs.40 and 46, the respondent-accused has discharged his burden, by bringing on record that on the date of issuance of the cheque he was on duty at Paithan Depot of Maharashtra State Road Transport Corporation as a Conductor and had no occasion to meet the applicant, particularly for issuance of the cheque in question. In view thereof, learned Counsel appearing on behalf of the applicant has invited my attention to the evidence of the applicant, so as to canvass that the applicant has established that the cheque was issued towards an admitted debt, i.e. return of consideration of the plot.

8. If the evidence of the applicant, in the above background is appreciated, it is clear the applicant has not brought on record the details of the property for which he had entered into an agreement with the respondent-accused. He has also not brought on record the details of the

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payment made by him towards part consideration. It is then required to be noted that apart from the testimony of the applicant, there are no other witnesses cited or examined by him, in order to support the transaction in question. All this prevailed upon the Magistrate to order acquittal of the respondent.

9. The view taken by the learned Magistrate is a possible view. No illegality is noticed in the impugned order of acquittal. Thus, leave is refused. Criminal Application stands rejected.

(N.W. SAMBRE, J.)

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