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

CRIMINAL APPLICATION NO.4213 OF 2015

Pawar Prakash Agarwal,
Age : 40 years, Occupation : Business,
R/o 85, Kolavale Nagar, Malegaon
Road, Dhule

..APPLICANT

VERSUS

Baban M. Mhaske,
age : 59 years, Occupation : business,
R/o 303, Jinbala Apartment,
behind Om Critical, Agarwal Nagar,
Dhule

..RESPONDENT

Mr P.S. Paranjape, Advocate for applicant;
Mr M.S. Kulkarni, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 16th March, 2016

ORDER :

By the present application under section 378 (4) of the Code of Criminal Procedure, the applicant seeks grant of special leave to appeal, for challenging the judgment and order of acquittal rendered by Judicial Magistrate First Class (Court No.6), Dhule, on 7th May, 2015, in Summary Criminal Case No.909 of 2011.

2. It is claimed by the applicant that he is a builder and was initially having cordial relations with the respondent herein. In view of the nature of business carried out by the applicant, the respondent entered into an

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agreement with him for purchase of a flat after obtaining housing loan from the Bank.

3. The respondent had issued two cheques of Rs.50,000/- each to the applicant, which were dishonoured and as such, the same had prompted the applicant to file the proceedings bearing Summary Trial Case No.909 of 2011, in the Court of Judicial Magistrate First Class (Court No.6), Dhule, under the provisions of section 138 of the Negotiable Instruments Act. The said trial culminated into acquittal of the respondent. Thus, the present application for special leave to appeal.

4. Heard Mr Paranjape, learned Counsel appearing on behalf of the applicant and Mr Kulkarni, learned Counsel on behalf of the respondent.

5. Mr Paranjape for the applicant would strenuously urge that although the presumption under the provisions of the Negotiable Instruments Act is rebuttable, yet for reaching to a conclusion that the presumption was rebutted there has to be sufficient material on record, at the behest of the respondent-accused.

6. Mr Paranjape has taken me through cross-examination of the complainant and other observations, so as to submit that the burden of proof on the present respondent was not discharged by him by rebutting the presumption. He would then submit that admittedly, the cheques in question were of the date subsequent to the date of execution of the sale

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deed, i.e. 17th March, 2009, whereas those cheques were dishonoured, which was formed to be the basis for initiation of the present proceedings on 13th September, 2010. In view thereof, according to him, the learned Magistrate has committed an error of law by observing that the transaction in question was not the one covered under the provisions of the Negotiable Instruments Act, but the cheques were issued only for the purpose of security. He would then submit that the evidence brought on record was not properly appreciated by the learned Magistrate.

7. Mr Kulkarni, while trying to oppose the application, has taken me through the observations made by the learned Magistrate, so as to convince that the view taken by the learned Magistrate is proper, in the background of the evidence brought on record.

8. With the assistance, I have perused the observations made by the learned Magistrate, so as to find out whether the burden of proof was properly discharged by the respondent.

9. The factual background, that the respondent had purchased flat no.303 on 3rd floor of Jinbala Apartments, Agrawal Nagar on Malegaon road, from the present applicant, vide sale deed dated 17th March, 2009, is not in dispute. It is then required to be considered that it is brought on record by the respondent that the said flat was purchased after obtaining housing loan from the Bank. Admittedly, the sale deed in question was executed on 17th March, 2009. The cheques which had dishonoured bore

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the date 13th September, 2010.

10. While dealing with the cheques in question, from the evidence on record, the learned Magistrate has noted that, difference in the handwriting appearing on the cheques, is very much admitted by the applicant. Apart therefrom, it is required to be noted that, it is claimed by the applicant that the amount was given to the respondent as a hand loan and then stated that the same is reflected in the account books/income tax returns and the staff from his office are the witnesses for the said transaction. However, no evidence to that effect is brought on record by the applicant, which has prompted the learned Magistrate to pass an order of acquittal of the respondent.

11. The fact brought on record by the respondent that he had purchased the property in question after obtaining housing loan from the Bank, in my opinion, appears to be the basis for discharging his burden *qua* the presumption under the provisions of the Negotiable Instruments Act.

12. In the above background, in my opinion, no case for grant of leave is made out. Leave as such is refused. Criminal Application, therefore, stands rejected.

(N.W. SAMBRE, J.)

amj