

(1)

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

CRIMINAL APPLICATION NO. 4858 OF 2015

Suresh Ziparu Pardeshi

..APPLICANT

VERSUS

The State of Maharashtra & anr.

..RESPONDENTS

Mr A. R. Syed, Advocate holding for Mr S. P. Brahme, Advocate for applicant
Mr S. D. Ghayal, Addl. Public Prosecutor for respondent No. 1;
Mr N. N. Desale, Advocate holding for Mr D. B. Thoke, Advocate for respondent No. 2

CORAM : N.W. SAMBRE, J.

DATE : 23rd June, 2016

ORAL ORDER :

Heard Mr Syed, learned Counsel holding for Mr Brahme, learned Counsel for applicant.

2. The learned Judicial Magistrate First Class, Chalisgaon, has convicted respondent No. 2 for offence punishable under Section 138 of the Negotiable Instruments Act, 1881, passed in S. C. C. No. 1262 of 2006, vide order dated 20th March, 2009, which was reversed by the learned Sessions Judge, Jalgaon, passed in Criminal Appeal No. 36 of 2009.

3. The ground for reversal of the order of learned Magistrate appears that the respondent No. 2 – accused was an eye witness to the

(2)

documents relating to the transaction.

4. From the perusal of the evidence of the applicant, it could be noticed that the documents, for which respondent was considered to be an eye witness, which was found to be basis for acquittal for learned Sessions Judge were not filed.

5. In view thereof, leave granted.

6. Criminal Application stands allowed in above terms.

7. Appeal is admitted.

8. Action under Section 390 of the Code of Criminal Procedure be taken against respondent No. 2.

9. Learned Additional Public Prosecutor waives service of notice on behalf of respondent No. 1. Mr Desale, learned Counsel holding for Mr Thoke, learned Counsel, waives service of notice on behalf of the respondent No. 2.

(N.W. SAMBRE, J.)

sjk