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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION No. 126 of 2014.

Mr Rajendra Prasad Yadav

..Applicant.

Vs

Mr Rajesh A. Poojay & Anr

..Respondents.

Mr Manoj Jaiswal for the applicant.

Mr A.S. Patil, APP for the State.

CORAM : A.S.GADKARI, J.

DATE : 4th August, 2016

P.C.

1) This is an application under section 378(4) of Cr.P.C. seeking leave to file appeal against the impugned Judgment and Order dated 17/2/2014 passed by the learned Metropolitan Magistrate, 14th Court, Girgaon Mumbai in C.C. No. 581/SS/2007 acquitting the respondent no.1 for the offence under section 138 of the Negotiable Instruments Act.

2) It is the case of the applicant/original complainant that the respondent no.1 had issued the cheque in question amounting to Rs. 4,74,000/- in pursuance of an agreement for sale dated 16.6.2006 pertaining to the immoveable property belonging/owned by the applicant. The total consideration for the said immoveable property was decided as Rs. 4,50,000/- and an amount of Rs. 24,000/- was added to it as the rent for the premises in which the respondent no.1 was staying prior to and

during the period of agreement of sale. The record reveals that the said agreement for sale dated 16.6.2006 was subsequently cancelled mutually by both the parties i.e. the applicant and the respondent no.1 on 27.8.2008. As the consequence of the said cancellation of agreement of sale, according to me, there was no legally enforceable liability, as far as the value of the immovable property amounting to Rs.4,50,000 is concerned remained in force. The Trial Court, after taking into consideration the said fact that the alleged legal liability for which the negotiable instrument was issued ceased to remain in force in the eyes of law, and therefore was no legally enforceable debt or liability towards the respondent no.1 to the applicant, acquitted the respondent no.1 from the charges framed against him.

3) As stated earlier, according to me, on 27.8.2008 there was no legally enforceable liability in existence by the respondent no.1 towards the alleged sale agreement dated 16.6.2006 and therefore, I find that the finding recorded by the trial Court is, right and correct. There is no error either in law or on facts and therefore, I find that there is no need to interfere with the Order of the acquittal passed by the Trial Court.

4) The application being devoid of any merit is accordingly dismissed.

(A.S. GADKARI, J.)