

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

20 CRIMINAL APPLICATION NO.1666 OF 2017

RAMPRASAD ASHRUBA GHADGE

..Applicant

VERSUS

BABAN TEJU RATHOD

.. Respondent

...

Advocate for the Applicant : Shri S.G. Chapalgaonkar

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CORAM : PR. BORA, J.

DATE : November 06, 2017

PER COURT :

1. Heard the learned Counsel appearing for the applicant.
2. Though the respondent is duly served, has not entered his appearance in the matter.
3. The present applicant had filed a complaint against the respondent – accused in the Court of Judicial Magistrate, First Class, Court No.3, Georai, Dist. Latur bearing Summary Criminal Case No.01/2014 for the offence under Section 138 of the Negotiable Instruments Act. It was the contention of the applicant that, the respondent had issued in his favour a cheque for the amount of Rs.Six Lakhs and the same got dishonoured for insufficient funds in

the account of respondent. According to the applicant, there was an agreement between the applicant and the respondent for supply of the labourers for sugarcane cutting. It was further the contention of the applicant that, the amount was paid by way of advance to the respondent vide an agreement entered into between the applicant and the respondent. The learned Counsel for the applicant submitted that, the concerned agreement was duly proved by the applicant before the trial Court by examining the notary, who has notarized the said agreement. The learned Counsel further submitted that, the trial Court, however, on some frivolous grounds has declined to accept the said evidence in the form of agreement and dismissed the complaint filed by the applicant. The learned Counsel, therefore, prayed for allowing the present application.

4. On perusal of the impugned Judgment, it appears to me that, the reasons which are assigned by the learned Magistrate for not accepting the evidence in the form of agreement in between the applicant i.e. original complainant and respondent i.e. the original accused required to be reconsidered. The conclusion so recorded *prima facie* appears to be unreasonable in view of the other evidence on record. In the circumstances, I am inclined to allow the present application. Hence, the following order.

ORDER

- i) The application is allowed.
- ii) The appeal be registered in accordance with law. On registration of the appeal, issue notice to the respondent returnable after six weeks.

(P.R. BORA, J.)

ggp