

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

907 CRIMINAL APPLICATION NO. 2840 OF 2016

**NIVRUTTI SARJERAO DEVRE
VERSUS
THE STATE OF MAHARASHTRA AND ANR**

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Mr. S.J. Rahate h/f Mr. S.G. Ladda, Advocate for Applicant.
Mrs. V.N. Patil Jadhav, APP for Respondent No. 1-State.
Mr. G.A. Kulkarni, Advocate for Respondent No. 2.

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**CORAM : A. M. DHAVAL, J.
DATED : 21.09.2017**

ORDER :-

1. Heard learned counsel Mr. S.J. Rahate for the Applicant and learned counsel Mr. G.A. Kulkarni for the Respondent No. 2.

2. This is an Application seeking leave to file appeal against acquittal. The Respondent No. 2 is acquitted of offence punishable under Section 138 of Negotiable Instrument Act, 1881 (for short hereinafter referred as “the Act”) by the Judicial Magistrate First Class, Aurangabad, on the ground that the cheque amount was not for legally enforceable debt. After perusal of the record and proceedings, it is found that the cheque

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was of Rs. 4,10,000/-. It shows many over writings and attestation at the figure of cheque amount. Apart from it, the documents on record and the arguments disclose that the cheque was issued for repayment of sale condition as the transaction was canceled. The initial agreement to sell was for Rs. 1,40,000/- and the sale deed executed by maternal uncle of Respondent No. 2 by a notarized documents at Exhibit-21 shows receipt of Rs. 2,60,000/- by maternal uncle of the accused and not by the accused.

3. The learned counsel for the Applicant submits that the balance amount of Rs. 1,50,000/- is towards the compensation. The cross-examination of the complainant shows that there was no agreement between him and the accused regarding payment of Rs. 4,10,000/-. He has not given any details regarding compensation of Rs. 1,50,000/-. In absence of such agreement, the cheque amount of Rs. 4,10,000/- cannot be said to be entirely towards the legally enforceable debt. It is also not clear whether the accused was liable or his maternal uncle was liable, because acknowledgment of Rs. 2,60,000/- is given by maternal uncle.

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4. In view of above facts, there is no merits in challenge to the acquittal on the ground of absence of legally enforceable debt. Hence, the Application deserves to be rejected, it is accordingly rejected.

[A. M. DHAVAL, J]

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