

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

(1) CR.APLN.NO.2623 of 2017

913 CRIMINAL APPLICATION NO. 2623 OF 2017

PRAKASH S/O. GANPAT BAHIRAT
VERSUS
SACHIN RAJENDRA BHOSALE AND ANR

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Advocate for Applicant : Mr.Ghanekar Nilesh S.
APP for Respondent State: Mr. R.B.Bagul
Mr. Thorbole M.A., Adv., for respondent no.1.

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CORAM : P.R. BORA, J.
Dated: September 13, 2017

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PER COURT :-

1. Heard learned Counsel for the applicant, learned A.P.P., and learned Counsel for respondent no.1.

2. Perused the impugned judgment. The trial Court has recorded acquittal of the present respondent no.1 from an offense under Section 138 of the Negotiable Instruments Act mainly on the ground that the complainant has failed to prove that notice was served on the complainant. The trial Court has also observed that the office copy of the demand notice which has been placed on record is neither signed by the complainant nor by the Advocate of the complainant.

3. Perusal of the impugned judgment reveals that the defense as was raised by the present respondent was that there was no legally enforceable debt. The material on record shows that

agp/-

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the issuance of the cheque, signature on the cheque are not the facts in dispute.

4. After having perused the impugned judgment, and the other material on record, it appears to me that the entire evidence will have to be re-scrutinized. As such, the leave sought for deserves to be granted so that the appeal can be heard on merits. Hence, the following order:

ORDER

1. The Criminal Application is allowed.
2. The Appeal be registered in accordance with law.
3. On registration of the appeal, issue notice to the respondents in the appeal. Learned Counsel Mr. M.A.Thorbole waives service for the respondent.
4. List the matter for admission after four weeks.
5. Call for R & P.

(P.R. BORA, J.)

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