

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO. 378 OF 2013
(for Leave to Appeal)**

Digambar Rane	Applicant
Versus	
Sabir Mohd. Ali & Anr.	Respondents

Mr. Pravin G. Sawant for the applicant.
None present for respondent no.1.
Mr. M.G. Patil for Respondent No.2/State.

***CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATE : 31st OCTOBER, 2017***

P.C. :

1. The applicant herein who is the original complainant in Criminal Case No.316/SS/2005 (Old CC No.44/S/91) has sought leave to challenge the judgment dated 18th December, 2012, whereby the learned Metropolitan Magistrate, 22nd Court, Andheri, Mumbai had acquitted the respondent of offence under Section 420 of Indian Penal Code.

2. I have perused the averments made in the complaint, copy of which was tendered by the learned counsel for the applicant. I have also perused the impugned judgment. A perusal of the complaint clearly indicates that the grievance of the applicant was that the respondent who is his neighbour has constructed an illegal and unauthorized structure on the basis of forged and fabricated census certificate and that the complaint was filed for offences under Sections

463, 467, 468, 471, 473 and 420 of the Indian Penal Code.

3. By order dated 09th October, 2003, process was issued only in respect of offence under Section 420 of the Indian Penal Code. It is not in dispute that the complainant had not filed any proceedings before the Appellate / Revisional Authority challenging part of the order whereby the learned Judge had declined to issue process in respect of other sections.

4. The record reveals that charge was framed under Section 420 of the Indian Penal Code and after considering the evidence adduced by the learned Counsel for the respondent, the learned Judge had held that the complainant had failed to prove that the accused had obtained the licence on the basis of forged census certificate.

5. A perusal of the complaint and the evidence on record reveals that the complainant has not averred and proved 'inducement' and 'deception' being the essential ingredients of 'cheating' as defined under Section 415 of the Indian Penal Code. The evidence on record does not disclose the essential ingredients of the offence. Hence, the learned Judge was justified in acquitting the respondent/accused. The finding of the learned Judge are based on the evidence on record and are neither illegal nor perverse. The order does not warrant interference. Hence, application for leave to appeal is rejected.

(SMT. ANUJA PRABHUDESSAI, J.)