

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.407 OF 2016

Amarjit Singh Sethi	...Applicant
Versus	
State of Maharashtra and Ors.	...Respondents

Mr. Sunil D'souza for applicant.
Mrs.M.R.Tidke for the State

CORAM: A.M. BADAR J.
DATED: 28th September, 2017

PC:-

1. Heard the learned advocate appearing for the applicant/original complainant. He took me through the order of the learned Metropolitan Magistrate recording conviction of the respondent Nos.2 to 5 of offence punishable under Section 138 of the Negotiable Instruments Act. By pointing out paragraph No.14 from the judgment and order of the appellate Court, the learned advocate argued that reasoning recorded therein by the appellate Court in allowing the appeal and acquitting the respondents of the offence punishable

under Section 138 of the Negotiable Instruments Act are totally perverse and illegal.

2. The matter pertains to time shared agreement. The agreement for sale dated 4th April, 1997 between the parties shows that plot and survey number of the land from village Kumbhe was not reflected in the deed executed in favour of the complainant by accused persons. Undertaking dated 14th April 1997 shows that the complainant can resale the property and accused persons were entitled to repurchase the same after three years for the consideration of Rs.7,00,000/- . That is how post dated cheques were issued.

3. On this backdrop the question will be whether the complainant was in a position to execute the deed of re conveyance or agreement of sale when the property itself was not specified. Therefore, the following order.

ORDER

- (i) The leave as prayed is granted.
- (ii) The appeal is admitted.
- (iii) Issue Notice to respondents. The learned APP waives notice for respondent No.1.
- (iv) Call for Record and Proceedings.
- (v) In the meanwhile, action under Section 390 of the Code of Criminal Procedure to follow before the learned Trial Court.

(A.M. BADAR, J)