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

CRIMINAL APPLICATION NO.486 OF 2015

Dashrath s/o Baliram Ramteke,
Aged : 39 years, Occ. Agriculturist,
R/o Tar File, Akola, Tq. & Dist. Akola ..APPLICANT

VERSUS

Rekha w/o Wamanrao Baitule,
Aged – adult, Occ. Service (Teacher),
R/o Deshmukh File, Near Well,
Akola, Tq. & Dist. Akola ..RESPONDENT

Mr N.R. Tekade, Advocate for applicant;
Mr V.J. Deshpande, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 15th March, 2017

ORAL ORDER

Learned Judicial Magistrate First Class, Akola, vide judgment and order dated 22nd May, 2015, passed in S.C.C. No.7273 of 2007, acquitted the respondent – accused of an offence punishable under Section 138 of the Negotiable Instruments Act. As such, the present application seeking leave to file an appeal under Section 378 (4) of the Code of Criminal Procedure.

2. Learned Counsel appearing on behalf of the applicant would invite my attention to the presumption provided under the Negotiable Instruments Act, so as to submit that the burden is on the respondent – accused to rebut such presumption. According to him, the acquittal ordered is not sustainable.

(2)

3. With the assistance, I have perused the judgment of acquittal. It is required to be noted that the applicant – complainant has given admission in his evidence that no transaction had taken place between him and the respondent. Once such admission has come on record, there is no question of rebuttal of presumption by respondent – accused. In view thereof, the acquittal ordered does not call for any interference. Leave stands refused. Criminal Application, therefore, is rejected.

(N.W. SAMBRE, J.)

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