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

CRIMINAL WRIT PETITION NO.826 OF 2016

Pankaj s/o Sitaram Radke,
Aged about 27 yrs.,
Occu. Business, R/o Professor Colony,
Plot No.75, Ranala, Kamptee,
Tahsil Kamptee,
district Nagpur ..PETITIONER

VERSUS

The State of Maharashtra,
through PSO, Jaripatka, Nagpur ..RESPONDENT

Mr S.G. Karmarkar, Advocate for petitioner;
Mr N.H. Joshi, Addl. Public Prosecutor for respondent

CORAM : N.W. SAMBRE, J.

DATE : 21st March, 2017

ORAL ORDER

Based on the agreement executed between the petitioner and the accused, Criminal Application, being Misc. Criminal Application No.2405 of 2016, for a direction under Section 156 (3) of the Code of Criminal Procedure came to be initiated alleging an offence punishable under Section 420 read with Section 34 of the Indian Penal Code. The said application came to be rejected by learned Judicial Magistrate First Class, Court No.7, Nagpur, vide order dated 29th August, 2016. As such, present petition.

2. Mr Karmarkar, learned Counsel appearing on behalf of the petitioner submits that the contents of the agreement, the acknowledgment executed on such agreement and the cheques which were issued, has to

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be read down so as to infer that after receipt of the hire charges from the Corporation towards the tanker and tractor in question, the present petitioner was entitled for refund of the amount. He would then urge that the learned Magistrate has committed an error in not issuing direction under Section 156 (3) of the Code of Criminal Procedure, as the ingredients for constitution of offences punishable under sections 420 and 406 of the Indian Penal Code are very much satisfied.

3. With the assistance, I have perused the application filed for issuance of direction under Section 156 (3) of the Code of Criminal Procedure and the agreement for sale of the tractor and the tanker.

4. From the contents of these two agreements, it can hardly be inferred that there was any agreement between the petitioner and the accused, that the accused shall refund the amount. What could be inferred from the document is, it was simpliciter a transaction of sale of the vehicles.

5. In view thereof, based on the recitals of the agreement of sale of the vehicles, the contents of the complaint and the alleged cheques, the learned Magistrate has rightly taken a view to refuse to issue direction under Section 156 (3) of the Code of Criminal Procedure. In view thereof, no case for interference is made out. Criminal Writ Petition, therefore, stands rejected.

(N.W. SAMBRE, J.)

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