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HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 34 of 2009**

- Sardar Surjeet Singh Chhabda S/o Sher Singh Chhabda, aged about 56 years, R/o Behind Mayapur Police Station Ambikpaur, Surguja (CG).

---- Appellant.

Versus

1. Bangbasi Ghosh S/o Charuchandra Ghosh, aged about 43 years, R/O. F-133, MiG Colony, 12 Amar Prem Apartment, Indore, Madhya Pradesh.
2. Bharatkher S/o Govind Kher, aged about 48 years, R/o 408-D, Scheme No.74-C. Vijay Nagar, Indore Madhya Pradesh.

---- Respondent

For the Appellant : Mr. Manoj Paranjpe Advocate with
Mr. Shanat Sharma, Mr. Anurag Singh
and Mr. A. Tiwari, Advocates.

For the respondents : Mrs. Hamida Siddiqui and Mr. Sumit
Singh Advocates.

Hon'ble Shri Justice Ram Prasanna Sharma**Order on Board****6-10-2018.**

1. This acquittal appeal filed under Section 378(4) of the Cr.P.C., 1973 is directed against the order dated 29-4-2004 passed by the Judicial Magistrate First Class, Ambikapur at Surguja (CG) in Complaint Case No. 264 of 1999 wherein the said court acquitted the respondents for commission of offence under Section 138 of the Negotiable Instruments Act, 1881 (for short, "the Act, 1881").

- 2.** The case was filed on the basis of dishonour of cheques dated 28-2-1998 & 30-12-1997 amounting to Rs.1,19,000/- and Rs.50,000/- respectively. It is admitted that the cheques were issued by the respondents in connection with tender No.115 which was entered into by the parties and both sides were partners of the said agreement which was executed between the parties on 22-7-1997 and in connection with said agreement cheques were issued. As both parties were partners to Ranu Power Line, the liability of the respondents was limited to the commission of the profit in the said contract. It is not a case where the respondents borrowed money from the appellant, but money was to be paid to the appellant out of profit of the said contract.
- 3.** The appellant admitted that the parties have entered into contract and as per version of both sides, the respondents are liable to pay the amount of commission to the appellant out of profit of the contract. The appellant appeared before the trial Court as PW/1 and as per his version (para 13) the work order of the said contract was not completed and it was terminated half way. The appellant is unable to state regarding period of contract and also unable to state what was the amount of profit incurred from the said work order. No profit and loss account was submitted before the trial Court regarding work by Ranu Power Company and therefore, it is not established

that profit was earned by the respondents. The respondents were under obligation to pay commission to the appellant out of profit of work but when profit of work itself is not established, no liability can be fastened on the respondents. The trial Court has elaborately discussed the entire issue and came to conclusion that the cheques were issued to discharge legal debt liability and therefore, charge under Section 138 of the Act, 1881 was not established. This court has re-assessed the evidence and has no reason to record contrary finding.

4. Accordingly, the appeal is liable to be and is hereby dismissed.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju