

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION [ALP] NO.28 OF 2017

Shri.Dhanaji Bharat Doifode ... **Applicant**

V/s.

Shri.Santosh Sitaram Gaikwad and anr. ... **Respondents**

Mr.Anand S. Patil for the applicant.

Mr.S.V. Gavand, APP for the respondent/State.

None for respondent no.1

CORAM : A.M.BADAR J.

DATED : 16th AUGUST 2018.

P.C. :

1. None appears for respondent no.1 when the application is called out for hearing.
2. Heard the learned Advocate appearing for the applicant/original complainant.
3. Perused the impugned judgment and order of acquittal of the respondent of the offence punishable under Section 138 of Negotiable Instruments Act.

4. The applicant is the purchaser of four wheeler vehicle from respondent no.1. After completion of deal, at the time of transfer of vehicle in the name of the applicant, it was found that respondent no.1 had not paid business and environmental tax on the said tempo. It was then agreed that the tax will be paid by the applicant and the same sum will be reimbursed to him by respondent no.1/accused. That is how the cheque came to be issued by respondent no.1 in favour of the applicant/original complainant. During the course of trial, the applicant has produced on record receipts issued by RTO to the tune of Rs.22077/-. However, still the learned Trial Court came to the conclusion that legally enforceable debt is not proved. *Prima facie* purport of presumption as envisage under Section 138 of Negotiable Instruments Act is missed by the learned Trial Court. In this view of the matter, the following order;

:: ORDER ::

- (i) Leave as prayed is granted.
- (ii) Memo of application for leave to appeal be considered as memo of appeal upon making suitable amendment thereat.
- (iii) Leave to amend to that effect is granted.
- (iv) Admit.
- (v) Issue notice to the respondents.

- (vi) The learned Additional Public Prosecutor waives notice for respondent no.2/State.
- (vii) Call for Record and Proceedings.
- (viii) In the meanwhile, action under Section 390 of Criminal Procedure Code before the Trial Court.

(A.M.BADAR J.)