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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 121 OF 2017

Subhash Bhimrao Gavsane

..Applicant

Vs

Sahakar Maharshi Shankarrao Mohite Patil Nagari/
Gramin Sahakari Pat Sanstha Maryadit & Ors.

..Respondents

Mr. Dilip Bodake a/w Sharad Bhosale for applicant.
Mr. V.V. Gangurde, APP for State.

CORAM : A.S.GADKARI, J.

DATE : 12th MARCH 2018.

P.C.:

1] This is an application under Section 378 (4) of Cr. P.C. seeking leave to file an appeal against the Judgment and Order dated 7th February 2017 passed by the Judicial Magistrate First Class, Madha in Summary Criminal Case No.417 of 2004, thereby, thereby acquitting the respondent Nos.1 to 4 for the offence punishable under Section 138 of the Negotiable Instruments Act.

2] Heard the learned Counsel for the applicant. Perused the record.

It is the case of the complainant that, the respondent No.1 had

appointed him as a Legal Advisor and had agreed to pay a sum of Rs.50.00 lakh by Cheque towards his professional charges by a Resolution dated 2.4.2004 passed by its Managing Committee. That, the cheque in question was issued in pursuance of the said Resolution. However, the said cheque was dishonoured on presentation and therefore applicant filed the present complaint.

It is the defence of the respondents that, the applicant/complainant did not comply with his part of obligation and did not give any advise in writing. That without performing his part of the contract, the complainant is claiming the said amount and subsequently deposited the said cheque in bank, which has been dishonoured.

3] The perusal of the record indicates that, the applicant has failed to prove his case beyond reasonable doubt by leading adequate and cogent evidence in that behalf. The complainant has also failed to prove the fact, that he had given advise to the respondent No.1 as was agreed and further failed to produce on record any writing to that effect, from which even remotely an inference can be drawn that in fact the complainant did give any advice to the respondent No.1. The record further indicates that, the respondents were successful in rebutting presumption as contemplated

under Section 139 of the Negotiable Instruments Act.

4] After perusing the entire record minutely, this Court is of the of the considered opinion that, the view adopted by the Trial Court is a rasonable and probable view in the facts and circumstances of the present case.

5] No case for grant of leave to file appeal is made out.

Application is accordingly rejected.

(A.S.GADKARI, J.)