

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

**CRIMINAL APPLICATION NO.122 OF 2017
(For Leave to Appeal)
WITH
CRIMINAL APPLICATION NO.123 OF 2017
(For Leave to Appeal)
WITH
CRIMINAL APPLICATION NO.124 OF 2017
(For Leave to Appeal)
WITH
CRIMINAL APPLICATION NO.125 OF 2017
(For Leave to Appeal)
WITH
CRIMINAL APPLICATION NO.126 OF 2017
(For Leave to Appeal)
WITH
CRIMINAL APPLICATION NO.127 OF 2017
(For Leave to Appeal)
WITH
CRIMINAL APPLICATION NO.128 OF 2017
(For Leave to Appeal)
WITH
CRIMINAL APPLICATION NO.129 OF 2017
(For Leave to Appeal)**

Rakesh Babulal Shah

.. Applicant

Vs.

The State of Maharashtra & Anr.

.. Respondents

.....
Mr.Kishor N. Bhatia a/w. Ms.Bindal Bhatia, Advocate for the Applicant.

Mr.M.G. Patil, APP for the Respondent – State.

Mr.R.S. Raymond and Mr.Prathmesh Ayare i/b. M/s.Raymond & Co., Advocate for Respondent No.2.

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CORAM : PRAKASH D. NAIK, J.

DATED : FEBRUARY 23, 2018.

P.C. :

The applicant in all these applications is seeking leave to file an appeal against the order of acquittal. The Respondents-accused were prosecuted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. Learned Magistrate acquitted the accused of the aforesaid offence.

2 Learned advocate for the applicant submitted that all issues framed by the trial Court were answered in the affirmative. The accused were acquitted on the ground that there is incomplete transaction between the parties and the complainant has not delivered the possession of property as per clause 5 of the agreement. It is also observed that if the suit filed by the complainant is allowed, the accused will be liable to pay consideration for the agreement which is cancelled. The Court, therefore, observed that it would be unjust to hold that the accused issued cheques for discharge of the legal liabilities. Learned advocate submitted that the complainant has proved that the cheques issued by the applicant were dishonoured and the same were issued in discharge of the liability. Learned advocate for the respondent submitted that the agreement was cancelled

and the transaction was not completed. The suit is filed by the complainant for declaration that the agreement is illegal and, it is, therefore, submitted that if according to the complainant the agreement itself is illegal, the question of any liability, does not arise.

3 I have considered the submissions advanced by both the parties. The submissions are required to be adjudicated at the time of final hearing of the Appeal. Case is made out for grant of leave.

4 Hence, I pass the following order:

:: O R D E R ::

- (i) Leave to file an appeal against the impugned judgments of acquittal passed by the Judicial Magistrate First Class, Court No.4, Thane, in complaints which are subject matter of these applications, is granted;
- (ii) Appeal admitted;
- (iii) Call for record and proceedings;
- (iv) Hearing is expedited.

(PRAKASH D. NAIK, J.)