

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.245 OF 2017

TUFAL R. RAHI

)...APPLICANT

V/s.

SMT.GULSHAN ARIF TASE AND ANR.

)...RESPONDENTS

Mr.Prasanna Bhangale i/b. Baburav Shinde, Advocate for the Applicant.

Mr.P.H.Gaikwad-Patil, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 10th SEPTEMBER 2018

P.C. :

1 Heard the learned counsel appearing for the applicant/original complainant. None appeared for respondent no.1 despite service.

2 Complaint alleging offence punishable under Section 138 of the Negotiable Instruments Act came to be filed by the applicant against the respondent no.1. After due trial, the learned

trial court was pleased to convict the respondent no.1 of the offence punishable under Section 138 of the Negotiable Instruments Act. This judgment came to be upset in appeal at the instance of respondent no.1.

3 Prima facie, I am of the considered opinion that the judgment of the learned trial court is giving cogent reasons for convicting the respondent no.1/original accused. The defence of the respondent no.1 was considered and it was held to be not fulfilling the standard of preponderance of probability. 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 treated as Memo of Appeal on effecting necessary amendments thereto.
- iii) Leave to amend is granted.
- iv) Admit.
- v) Issue notice to respondents.
- vi) The learned APP waives notice for respondent no.2/State.

- vii) Call for Record and Proceedings.
- viii) In the meanwhile, action under Section 390 of the Code of Criminal Procedure before the learned trial court.
- ix) Request for stay to Clause No.(6) of the operative portion of the appellate order is rejected as respondent no.1 is acquitted of the offence punishable under Section 138 of the Negotiable Instruments Act by the Competent court.

(A. M. BADAR, J.)

Arti Vilas
Khatate

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