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

CRIMINAL APPLICATION NO.3764 OF 2009

Shri Vishwanath Mojesh Chopade

..Applicant

Vs

Mr. Vinod Himatrao Kokate & Anr.

..Respondents

Mr. Umesh Mankapure for applicant.

Mr. M.L. Patil for respondent No.1.

Mr. A.R. Kapadnis, APP for State.

CORAM : A.S.GADKARI, J.

DATE : 2nd MAY 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 8st May 2009 passed in Special Civil Case No.173 of 2007 by the Judicial Magistrate First Class, Miraj, thereby acquitting the respondent No.1 from the offence punishable under Section 138 of the Negotiable Instruments Act.

2] Heard the learned Counsel for the applicant and the learned Counsel for the respondent No.1. Perused the record.

3] It is the case of the applicant that, he is the owner of landed property which was given to the respondent No.1 for development. That a

supplementary agreement dated 29.4.2006 was executed and signed between the parties. That by the said agreement, the respondent No.1 had agreed to give three shops/galas situated on the ground floor of Vishwas Plaza to the applicant. However, despite agreement, the respondent No.1 failed to give the said shops/galas to the applicant. As per agreement, if the respondent No.1 failed to give the said shops to the applicant, he was to pay a sum of Rs.8,01,750/- to the applicant. That as the respondent No.1 failed to comply with his part of obligation, he issued a cheque of Rs.8.00 lakhs in favour of the applicant which was dishonoured on presentation.

4] The evidence on record clearly indicates that, the said agreement dated 29.4.2006 has not been brought on record i.e. it was not produced before the Trial Court in evidence by the applicant and the cheque amount i.e. Rs.8.00 lakhs issued by the respondent No.1 differs from the amount mentioned in the agreement i.e. Rs.8,01,750/-. It is the specific defence of the respondent No.1 that there are various transactions inter-se between the parties and he had deposited the said cheque in question with the applicant as a security for performing various other obligations as per the main agreement. The respondent No.1 has further taken a categorical defence that the cheque in question has been misused

by the applicant despite receiving payment and/or other consideration as per the main agreement. I find substance in the defence of the respondent No.1. The evidence on record further clearly establishes the fact that the applicant has not proved the basic fact that, there was any legally enforceable liability or debt at the behest of the respondent No.1 for which the negotiable instrument in question was issued by him. It further appears from the record that, the respondent No.1 is successful in rebutting the presumption under Section 139 of the Negotiable Instruments Act.

4] After perusing the entire record, this Court is of the opinion that, the view adopted by the Trial Court is a reasonable 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.)