

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APPA) NO.107 OF 2017

(Smt. Nirmala wd/o Raju Pragat ..vs.. Mr. Raju s/o Maniram Sonkuvar)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Shri G.N. Khanzode, Advocate for the applicant,
None for the non-applicant.

CORAM: ROHIT B. DEO, J.

DATE : 08-03-2018

The applicant, who is the original complainant in Summary Criminal Case 20400/2014, is seeking leave to challenge the judgment and order of acquittal dated 13-12-2016 rendered by the learned 24th Joint Civil Judge Junior Division and Judicial Magistrate First Class (Special Court for the offences punishable under Section 138 of the Negotiable Instruments Act), Nagpur.

2. The learned Magistrate was pleased to acquit the respondent-accused of offence punishable under Section 138 of the Negotiable Instruments Act, 1881 *inter alia* recording a finding that the applicant failed it to prove that the disputed cheque was issued by the accused, muchless towards discharge of existing debt or liability.

3. The gist of the complaint is that the accused is the proprietor of Takshashila Real Estate. A project named

and styled Gopal Nagari, with 72 plots on offer was floated by the said firm. The complainant entered into an agreement to purchase Plot 7, admeasuring 3000 sq.ft. for Rs.7,80,000/- and paid Rs.3,00,000/- as earnest in cash. The transaction did not materialise and the accused promised to repay the amount of Rs.3,00,000/-. The accused issued cheque dated 17-6-2014 bearing 239566, drawn on Punjab National Bank for Rs.50,000/- as part repayment. The cheque was dishonoured. The statutory notice was not complied with and hence, institution of the complaint.

4. The accused disputed that he is the proprietor of Takshashila Read Estate. The accused further disputed the alleged agreement (Exhibit 18). The accused disputed his signature on the cheque and indeed issuance of the cheque.

5. Despite the accused having disputed that he issued the disputed cheque and his signature on the cheque, the complainant did not adduce any evidence to prove that the cheque was issued against an account maintained by the accused. No attempt was made to prove the signature of the accused on the disputed cheque. No evidence is adduced to connect the accused to the said firm. No attempt is made to prove (Exhibit 18) purporting to an agreement although the accused disputed his signature on the said agreement. The witness to the agreement is not examined. The agreement purports to be executed in favour

of the complainant and one Meera Giri. The said Meera Giri is not examined.

6. The accused could have easily examined the concerned officer of the bank to prove that the cheque was issued against the account maintained by the bank or that the accused operated the account in the name of Takshashila Real Estate.

7. The finding of acquittal recorded by the learned Magistrate does not suffer from any infirmity. The view taken is not only a possible view, is the only view which could have been taken in the teeth of the evidence on record.

8. No case is made out for grant of leave to appeal.

10. The application is sans merit and is rejected.

JUDGE