

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 137 OF 2016**

Shri Ashok Vishnu Mahabal

.....Applicant.

V/s

Gajanan Shankar Panshikar
and Anr.

..... Respondents.

Mr. Sudhir Prabhu for the Applicant.

Mr. S.J. Sabnis i/b Mr. Pradnyesh G. Sabnis for Respondent No.1.

Mr. S.V. Gavand, APP for the State.

CORAM: NITIN W. SAMBRE, J.

DATE: DECEMBER 6, 2019

P.C.:-

1] Respondent No.1/Accused came to be acquitted in R.C.C. No.200 of 2008 vide judgment dated 08/02/2016. As such, this application for leave to appeal.

2] The case of the Applicant/Complainant is, Applicant and Respondent No.1 are teachers by profession. Respondent No.1 entered into an agreement of purchase of agricultural land of the Complainant for an agreed consideration of Rs 4,00,000/-, out of which Rs 25,000/- was paid in cash, whereas balance consideration of

Rs 3,75,000/- was to be paid through cheque. Accordingly, cheque issued for the said amount was dishonoured, which has resulted into initiation of the complaint.

3] In the aforesaid background, submissions of the learned Counsel for the Applicant/Complainant are, even if suit for possession is dismissed, an appeal before the lower Appellate Court is pending adjudication in relation to the land in question. He would then urge that promise to pay Rs 3,75,000/- is based on receipts-Exhibits-67, 68 and 84 and that being so, the Magistrate committed an error of law in acquitting the Applicant. The learned Counsel has also relied on presumption under Section 118 and 139 of the Negotiable Instruments Act.

4] While countering the above submissions, the learned Counsel for Respondent No.1/Accused would submit, fact remains that suit by the complainant for possession is already dismissed and it is a stand of the accused that he is not in possession of the land in question. He would then urge that once Respondent No.1/Accused has come out with a case that he is not keen on getting the Sale Deed executed of the land

in question, there cannot be a presumption of legally enforceable liability. He would urge that the Magistrate has rightly rejected the complaint.

5] Considered the submissions.

6] A suit for possession being RCS No.49 of 2010, which came to be initiated by the Applicant/Complainant, was dismissed on 31/03/2018. Civil Court has recorded a finding that the alleged contract dated 05/02/2008 for payment of Rs 4,00,000/- between the Complainant and the Accused was not proved.

7] It is settled position in law that findings of civil court are binding on criminal court qua the same issue.

8] Apart from above, it is really difficult to infer from the factual matrix narrated in the complaint that there is legally enforceable debt when Respondent No.1/Accused has come out with a case that he is not interested in purchasing the property for which the agreement was entered into. The learned Magistrate, as such, in my opinion, has

rightly acquitted Respondent No.1/Accused.

9] Apart from above, principle of presumption, as is sought to be relied on by the learned Counsel for the Applicant/Complainant under clause (b) of Section 118 and Section 139 of the Negotiable Instruments Act, will not be attracted in the given facts of the case, as the Applicant, based on the contract, has already failed in establishing his civil rights of getting balance consideration of Rs 3,75,000/- from Respondent No.1/Accused.

10] No case therefore for grant of leave to appeal is made out. Hence, application for leave to appeal stands rejected.

(NITIN W. SAMBRE, J.)