IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.447 OF 2013
IN
CRIMINAL APPEAL NO. OF 2013

Shri. Sambhaji Chanda Waghmare .... Applicant
Vs.
Shri. Rajendra P. Patwardhan & Anr. .... Respondents

Mr. Umesh R. Mankapure for the applicant.
Mr. Abhay A. Jadhavar I/by Mr. Sachin K. Hande for Respondent no.1.
Mr. S.H. Yadav, APP for the State

Coram **: *Smt. Sadhana S. Jadhav***, J.
Date **: 11th March 2019**

P.C.:

1 Heard.

2 This is an application seeking leave to appeal challenging the judgment and order dated 16th March 2013 passed by Judicial Magistrate First Class, Tasgaon, thereby acquitting the respondent of the offence punishable under Section 138 of Negotiable Instruments Act.

3 The applicant herein happens to be the original complainant in S.C.C. No. 37 of 2010. It appears from the records and the evidence adduced at the time of trial that the complainant and the accused had cordial relations. That the complainant had entered into an agreement with the accused thereby agreeing to purchase the property situated at City Survey No.2792, admeasuring 35.04 R., out of 17,604 sq.mtrs. The applicant had paid Rs.2,00,000/- towards the deposit. The said amount was paid in cash. It appears from the records that subsequently the agreement did not materialise and therefore as per the agreement, the accused/ respondent was liable to pay the said amount of Rs.2,25,000/- to the complainant. The accused had issued a cheque towards the said liability drawn on Murgharajendra Sahakari Bank Limited, Miraj. The said cheque was dishonoured on account of 'insufficient funds'.

4 The applicant herein had issued a statutory notice to the accused on 12th January 2010. It appears that the accused had not given reply to the said notice and therefore the applicant herein was constrained to file a complaint against the accused in the Court of

Judicial Magistrate First Class, Tasgaon under Section 138 of Negotiable Instruments Act and under Sections 420, 417 of Indian Penal Code.

5 Learned Magistrate had recorded the evidence of the complainant. On perusal of paragraph 14 of the said judgment, which reads as follows :

> "..... As the said cheque was dishonoured, Central Bank had filed criminal complaint against accused and in that case, as accused had paid full amount of cheque, complaint was disposed of. He had in clear terms had admitted that, in that case, accused personally was not owing any amount to Central Bank. Besides these admissions of complainant, accused had filed certified copies of Exh. 1 in S.C.C. No. 766 of 2007 at Exh. 67. From the perusal thereof, it is clear that the complaint was withdrawn on 27/02/2009 after accused had done full payment of cheque amount i.e. Rs.2,00,000/- to Central Bank. Moreover, accused had examined the then Manager of Central Bank at Exh. 59."

It is more than clear that the accused had repaid the legally payable debt to the applicant as he stood surety to the applicant before the Central Bank of India and had cleared the loan of the applicant to the tune of Rs.2,00,000/-. The accused had examined the Manager of the Central Bank of India, which is at Exhibit 59. In view of the admission of the complainant, it is more than clear that the accused does not owe any amount to the applicant.

6 Learned counsel for the applicant at this stage submits that in fact the accused has paid Rs.2,00,000/- to Central Bank of India, however, the applicant had paid Rs.2,25,000/- and therefore, he has to recover Rs.25,000/-. The said contention need not be taken into consideration at this stage.

7 In view of above, the application being sans-merits stands dismissed and accordingly disposed of.

(*Smt. Sadhana S. Jadhav,* J)