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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO. 130 OF 2018**

Radheshyam Ramlakhan Yadav

.....Applicant

V/s.

Indumati Nagesh Ghadge and another

.....Respondents

Mr. Pranil K. Sonawane for the applicant

Mr. S. V. Gavand APP for the State

CORAM : NITIN W. SAMBRE, J.**DATE : DECEMBER 9, 2019.****P.C.**

Heard. Based on an alleged payment made by the applicant from March 3, 2011 to August 3, 2012, applicant-complainant claim that the Agreement of employment/carryout out development of the building for the institution owned by the respondents since was not done, the amount of donation of Rs. 6 Lakhs was refunded by virtue of cheque. Since the cheque was dishonoured, proceedings for offence punishable under Section 138 of Negotiable Instruments Act came to be initiated. Respondent-accused came to be acquitted vide

Judgment and Order dated 15/07/2017 by Judicial Magistrate First Class, Kalyan.

2 The submissions are, in either case, once the cheque is issued, there is a presumption in favour of the applicant that the cheque was issued for legally enforceable debt and the onus as such shifts on the accused to prove that the cheque was not issued towards lawful debt.

3 If the aforesaid submissions are appreciated in the backdrop of pleadings in the complaint, what can be noticed is, if the amount was paid by the applicant to the accused towards building fund, refund of the same cannot be enforced under the Negotiable Instruments Act particularly when there is no evidence to show that the terms of contract were not taken to its logical end.

4 If the amount was accepted by the accused of which refund was not honoured towards consideration for providing employment, still same cannot be termed to be given for lawful object and as such,

there is legally enforceable debt.

5 Order of acquittal appears to be just and proper. No case for interference is made out. Application fails. Leave is refused.

[NITIN W. SAMBRE, J.]