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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 371 OF 2017**

Magestic Colors Pvt. Ltd. Applicant.
V/s
Westlands Chem Tex Traders Pvt. Ltd.
& Others Respondents.

Mr. R. S. Tripathi i/b Mr. Chacko Joseph for the Applicant.
Mr. A.A. Palkar, APP for the State.

CORAM: NITIN W. SAMBRE, J.

DATE: DECEMBER 6, 2019

P.C.:-

- 1] Heard Mr. Tripathi, learned Counsel appearing on behalf of the Applicant.
- 2] Respondent/Accused came to be acquitted by the impugned judgment passed in C.C. No.489/SS/2011 on 19/7/2017 by the Metropolitan Magistrate, Mazgaon, Mumbai.
- 3] The submissions are, once the cheque is issued by the Accused in favour of the Complainant, presumption under Sections 118 and 139 of the Negotiable Instruments Act is attracted and as such, onus is on the accused of proving that the cheque was not issued for legally

enforceable debt. According to the learned Counsel, Accused should have proved as to what was the object behind issuing the cheque in question and the mode and manner in which the Applicant/Complainant has misused the cheque. So as to substantiate his contention that the judgment impugned is not sustainable, he would draw support from the statement of the Accused recorded under Section 313 of the Criminal Procedure code, particularly, answers of the Accused to Question Nos. 3, 5 and 13 and other relevant material.

4] I have perused the entire judgment and the material brought on record by the Applicant in the present Application.

5] Defence put-forth by the Accused is that of denial of the transaction and alleged misuse of the cheque by the Applicant/Complainant. Even if there is a presumption under Section 139 of the Negotiable Instruments Act in favour of the holder of the cheque, the initial burden is on the Applicant/Complainant to prove that the cheque was issued for legally enforceable debt, particularly in the background of the defence raised by the accused person.

6] The Metropolitan Magistrate, while deciding the claim of the Complainant, has noticed that the Complainant has failed to discharge his initial onus, as he has failed to establish that the cheque was issued towards legally enforceable debt. The learned Magistrate has noted that the Applicant has tried to establish the plea of legally enforceable debt based on tax invoice. However, he has also noticed that there is no other independent evidence other than the tax invoice to establish the transaction between the parties. Even the Register maintained for removal of goods from the godown so as to certify the same for excise purpose, does not contain entry of the goods which are claimed to have been dispatched to the Accused.

7] In the aforesaid background, observation of the learned Magistrate that the present Applicant/Complainant has failed to discharge his onus appears to be just and proper and based on the available evidence on record.

8] As such, Application for leave to appeal stands rejected.

(NITIN W. SAMBRE, J.)