

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.434 OF 2018**

**(For Leave to Appeal - Private)**

Shri.Prakash D. Wadhwa      ...      **Applicant**

V/s.

Joseph P. George & Anr.      ...      **Respondents**

.....

Mr.N.R.Bubna with Mr.Girish J. Paryani, Advocate for the Applicant.

Mr.Vikram R. Sutaria, Advocate for the Respondent No.1.

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

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**CORAM : A.M.BADAR J.**

**DATED : 12<sup>th</sup> FEBRUARY 2019.**

**P.C. :**

1            Heard both sides.

2            *Prima facie*, it is seen that agreement dated 14/04/2015 cancelling the earlier agreements was lost sight of the learned trial Court while deciding the complaint for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. Similarly, undisputed position emerging on record from statement of the accused under Section 313 of the Code of Criminal Procedure was also lost sight of while dismissing the complaint.

3            In this view of the matter case for consideration is made out.

4            Leave, as prayed, is granted. Necessary amendment be effected within a period of one week. The Memo of Application be treated as Memo of Appeal after carrying out necessary amendments.

5            Admit.

6            Issue notice to respondents.

7            Shri.Sutaria, the learned Advocate waives notice for the respondent No.1. The learned Additional Public Prosecutor waives notice to the respondent No.2/State.

8            Call for Record and Proceedings.

**(A.M.BADAR J.)**