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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO. 452 OF 2019****Mr. Anant s/o Ramkumar Lohia****.....Applicant****V/s.****The State of Maharashtra and others****.....Respondents****Mr. Anand Mishra i/b Mr. Ashok M. Saraogi for the applicant****Mr. Jignesh Shah for respondent nos. 2 to 4****Mr. R. M. Pethe APP for the State****CORAM : NITIN W. SAMBRE, J.****DATE : NOVEMBER 8, 2019.****P.C.**

This is an application by original complainant who is businessman by profession. He initiated C.C. No. 8161/SS/2014 against respondent-accused for an offence punishable under Section 138 of Negotiable Instruments Act for which respondents were acquitted vide Judgment and Order dated 11/10/2017.

2 It is the case of applicant that cheque dated 28/10/2014 for an amount of Rs. 5 Lakhs drawn on Union Bank of India came to be

issued for legally enforceable debt in favour of the applicant. The dishonour of the same has resulted into initiation of prosecution.

3 It is further claimed that in the month of October 2014, pursuant to request made by accused nos. 2 & 3, financial assistance to the tune of Rs. 5 Lakhs was extended to the accused. Accused as such executed bill of exchange and also cheque in question.

4 The issue of legally enforceable liability against respondent-accused to be proved by complainant/applicant is required to be appreciated in the light of averments and evidence of the complainant/applicant.

5 Complainant/applicant admitted that he is into business of cloth trading and non practicing chartered accountant, however, subsequently claimed that he is an employee of one Suchitra Limited drawing monthly salary.

6 Applicant was unable to state his monthly or annual income.

He has claimed that he met accused in a social gathering and one Pawan was a man of their acquaintance who was not examined by the applicant in support of his case. He was also unable to narrate as to date of meeting and date of giving hand loan of Rs. 5 Lakhs. He was also not certain as to which of the accused has signed cheque or bill of exchange i.e. Exhibit 24 & 25. The aforesaid testimony of the applicant has prompted the Court below to order acquittal of the respondent-accused as the applicant was unable to establish the legally enforceable debt.

7 In the wake of above material on record, this Court is of the opinion that no case for grant of leave is made out. Leave is refused.

[NITIN W. SAMBRE, J.]