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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 86 OF 2015

M/S. LIBRA (AGENCIES) PVT LTD.Applicant.

V/s

THE STATE OF MAHARASHTRA & Others Respondents.

WITH

CRIMINAL APPLICATION NO.592 OF 2015

IN

CRIMINAL APPLICATION NO. 86 OF 2015

M/S. LIBRA (AGENCIES) PVT LTD.Applicant.

V/s

THE STATE OF MAHARASHTRA & Others Respondents.

Mr. Devendra Tiwari i/b Siddharth Murarka for the Applicant.
Ms. A.A. Takalkar, APP for the Respondent/State.

CORAM: NITIN W. SAMBRE, J.

DATE: NOVEMBER 23, 2021

P.C.:-

1] Mr. Tiwari, Counsel for the Applicant submits that they have already returned the brief to the Applicant and as such not appearing on behalf of the Applicant.

2] There is delay of about 7 days caused in preferring the present Application for leave to appeal. The said Application is pending since 2015. The cause cited in the Application is, lawyer to whom the matter was entrusted has lost the papers. Considering the law laid down by the Apex Court in the case of *Rafiq & Anr vs Munshilal & Anr* reported in **1981 AIR 1400** default of the lawyer cannot be read to the detriment of the litigant, delay stands condoned. Criminal Application No.592 of 2015 accordingly stands allowed.

3] Court of learned Metropolitan Magistrate vide its judgment under challenge dated 26/05/2014 acquitted Respondent Nos. 2 and 3 of the offence punishable under Section 138 of the Negotiable Instruments Act.

4] The case of the complainant/applicant is, in all three cheques

were issued for the value of Rs. 1,20,000/-, Rs 1,20,000/- and Rs 1,00,000/- on 20/12/2010, 20/02/2011 and 25/03/2011 respectively, which were dishonoured. The contention of the Applicant is, documents such as original cheques, Bank Memo (Exhibits 14 and 15), Demand Notice (Exhibit-16) and Postal Receipts (Exhibit-17) and Acknowledgment Card (Exhibits 18 and 19) were produced on record. Complainant's witness Mr. Arun Shinde (C.W.1) entered the witness box to establish that cheques were issued for admitted debt.

5] The defence of Respondent Nos. 2 and 3 was that the cheques were issued towards compensation in view of damages suffered by the complainant. The witness of the complainant Mr. Shinde (C.W.1) in his cross-examination has admitted that there was no liability to pay the amount as mentioned in the cheques on the date when the cheques were issued.

6] In the aforesaid backdrop, Applicant has failed to demonstrate before the Court below either through oral or documentary evidence that cheques in question were issued for admitted debt. As the acquittal is based on failure of the Applicant to demonstrate before the

Court below that the cheques were issued for admitted debt, in my opinion, Court below was justified in acquitting Respondent Nos. 2 and 3/Accused.

5] No case for grant of leave to appeal is made out. As such leave stands refused. Criminal Application No. 86 of 2015 stands rejected.

(NITIN W. SAMBRE, J.)