

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

926 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO.204 OF 2019

**PRADIP S/O. VISHWANATH WAGHMARE
VERSUS
SADANAND S/O. DAYANAND UNAWANE**

Mr.R.S. Shinde h/f. Mr.V.P. Latange, Advocate for the applicant.
Mr.S.R. Andhale, Advocate for the respondent.

**CORAM : KISHORE C. SANT, J.
DATED : 30.09.2022**

PC :-

01. Heard learned Advocates for both sides. It is specific case of the applicant that the accused-respondent had issued a cheque towards discharge of legally enforceable liability. There was transaction between the parties. There was an agreement to sell that was executed in favour of the accused, wherein amount of consideration was decided to be Rs.31 lakhs, however, it is upon request of the respondent-accused to save stamp duty, consideration in the sale-deed was shown to be Rs.2,65,000/-. He states that a cheque was issued for an amount of Rs.24 lakh towards consideration.

02. Learned Advocate for the respondent submits that there was no

legally enforceable liability and that is his specific case. Learned Court below though has accepted all the points, which are given para 15 of the judgment in favour of the applicant, only as regards point No.2 it is held that the cheque was not issued towards legally enforceable liability. While recording this finding, learned Trial Court has considered that once the sale-deed is executed where consideration is shown to be Rs.2,65,000/-, it was not permissible to go back to the contents of the agreement to sell, wherein the amount of consideration is shown to be Rs.31 lakhs. Though learned Court below has accepted that there was agreement to sell executed between the parties, still in view of the registered document, it cannot be accepted that consideration was receivable.

03. Arguable case is made out. Therefore, application is allowed.

Leave granted to file appeal against acquittal.

04. Criminal Appeal be registered.

05. Admit.

06. Learned Advocate Mr.S.R. Andhale waives notice for the respondent.

07. Action under section 390 of the Criminal Procedure Code to follow against the respondent.

[KISHORE C. SANT, J.]