**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CRIMINAL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO.504 OF 2019**
**(leave to appeal)**

Tukaram Sitaram Sane ...Applicant
Versus
Sachin Sitaram Sajekar and Anr. ...Respondents
....
Mr. R.R. Varma with Mr. Sanket Thorat and Mr. Sachin Suware for the Applicant/Appellant.
Mr. S.H. Yadav, APP for Respondent No.2-State.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.**

**DATED: 20th APRIL, 2022.**

**P.C.:-**

1. The Applicant has challenged judgment dated 10/10/2019 in C.C. No.1981/SS/2011 whereby the learned Metropolitan Magistrate, 43rd Court, Borivali, Mumbai has acquitted the Respondent No.1 for offence punishable under Section 138 of the Negotiable Instruments Act.

2. The Applicant herein had filed a complaint under Section 138 of the Negotiable Instruments Act in view of dishonour of two cheques No.333267 and 333268 both dated 24/01/2011 for an amount of Rs.4,50,000/- and Rs.5,00,000/- respectively. The Applicant had claimed that he had sold to the accused land under Survey Nos.354, 335 and 88 of

the village Nagshet, Taluka Sudhagad, District-Raigad, for sale consideration of Rs.12,60,000/-. The Applicant claims that the cheques were issued towards part payment of the sale consideration. Said cheques were dishonoured for 'insufficient funds'. Demand notice was issued on 28/06/2011. Since the accused failed to pay the cheques amount, the Applicant-Complainant filed a complaint under Section 138 of the Negotiable Instruments Act.

3. The Complainant had alleged that the cheques were issued towards part sale consideration. The learned Judge has taken note of the fact that the sale price as mentioned in the sale deed is Rs.2,73,500/- and that the Complainant has admitted having received the same. The learned Judge therefore held that the Respondent-accused has rebutted the presumption that the cheque was issued towards legally enforceable debt and hence acquitted the accused of offence under Section 138 of the NI Act.

4. Mr. R.R. Varma, learned counsel for the Applicant submits that the sale consideration agreed between the parties was Rs.12,60,000/-. He further submits that this is evident from the fact that the Respondent had paid an amount more than that mentioned in the sale deed. He submits

that Respondent-accused has admitted having issued the cheques and that he has failed to discharge the liability.

5. The Applicant -Complainant has come up with a specific case that Respondent-accused had agreed to purchase the land for an amount of Rs.12,60,000/-. He has stated that the accused had handed over the said cheques towards payment of sale consideration. A perusal of the sale deed dated 03/01/2011 reveals that the subject land was sold at Rs.2,73,500/-. The Complainant had not disclosed this fact in the complaint or in the affidavit in evidence. In the cross-examination the Applicant-Complainant has admitted that he had received Rs.3,60,000/- in cash. This fact was also not disclosed in the complaint or in the affidavit in evidence. The Applicant, having received the amount of sale consideration as mentioned in the sale deed, cannot claim that Respondent-accused was liable to pay any sale consideration. The learned Judge was therefore justified in holding that Respondent has proved by preponderance of probability that cheques were not towards discharge of legally enforceable debt. The impugned judgment is neither perverse nor suffering from any material infirmity and does not warrant interference. Hence, the application is dismissed.

**(SMT. ANUJA PRABHUDESSAI, J.)**