

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

2. CRI.APPLN/611/2014

MADHAV HARIBHAU BORDE
V/S
BHAGWAN ARJUN PACHPINDE

Mr. R.O. Awasarmol, Advocate for applicant.

Mr. R.K. Jadhavar, Advocate for respondent.

CORAM : T.V. NALAWADE, J.

DATED : 14th August, 2015.

ORDER :

1. The application is filed under section 378 (4) of Criminal Procedure Code for grant of leave to file appeal against judgment and order of SCC No. 2232/2011 which was pending in the Court of Judicial Magistrate, First Class, Aurangabad. The J.M.F.C. has acquitted the respondent/accused in a private complaint filed under section 138 of Negotiable Instruments Act by the applicant.

2. Heard the learned counsel for the complainant. Seen the reasoning and the record. The hand loan was given of Rs. 68,000/- and according to the complainant, for repayment of the loan, the cheque in question was given. The procedure laid down under the Act was followed and case was filed. The trial Court has given acquittal by considering the circumstances like

difference in ink appearing on the cheque, absence of any receipt obtained by the complainant from the accused and the fact that the accused had already registered his super shopee business. There is virtually no discussion about the presumptions available under section 118 and 139 of Negotiable Instruments Act. Accused has not disputed the signatures. In view of these circumstances, this Court holds that there is good arguable case to complainant/applicant.

3. In the result, the application is allowed. Leave is granted.

4. Appeal is **admitted**. Notice after admission. It is waived by learned counsel Shri. R.K. Jadhavar for respondent/accused.

[T.V. NALAWADE, J.]

ssc/