

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

4. CRI.APPLN/590/2015

VASANT MANIKRAO PATIL
V/S
THE STATE OF MAHARASHTRA AND ANR

Mr. S.A. Wakure, Advocate for applicant.

Mrs. M.S. Patni, APP for State.

CORAM : T.V. NALAWADE, J.

DATED : 6th August, 2015.

ORDER :

1. The application is filed under section 378 (4) of Cr.P.C. for grant of leave to file appeal against judgment and order of S.C.C. No. 535/2013 which was pending in the Court of J.M.F.C., Osmanabad. The J.M.F.C. has acquitted the respondent/accused of the offence punishable under section 138 of Negotiable Instruments Act in a private complaint filed by the complainant.

2. This Court has gone through the reasoning. It is the case of complainant that he has given the amount for purchasing of plot, but the accused did not purchase the plot and for returning the amount, he gave cheque in question. One document like Vachan-nama like Exh. 63 is also produced which is on stamp paper. It appears that secondary evidence is given

for proving the document. Undertaking was given by the accused to pay the amount of Rs. five lakh to the complainant to indemnify him. Thus, there was some transaction between the accused and the complainant. When the document was exhibited and the accused has taken the defence of forgery and no evidence was given to prove the forgery, the Court has considered the contention of the accused that it was a forged document. This Court hold that there is good arguable case in the appeal to the complainant.

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

4. Appeal is **admitted**. Notice after admission made returnable on 15.9.2015.

[T.V. NALAWADE, J.]

ssc/