

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

**CRIMINAL APPLICATION NO. 1799 OF 2015**

ATUL RANG BHANDAR PROPRIETOR EKNATH S/O RAMKRISHNA  
PADAMWAR  
VERSUS  
M/S. RAGHUVVEER AND MAHAVEER CINEMAS PROPRIETOR RAVI  
CHANDEL AND ANOTHER

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Mr. P. N. Sonpethkar, Advocate for applicant  
Mr. D. B. Bhange, APP for respondent No. 2  
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**CORAM : V. K. JADHAV, J.**

**DATED : 27<sup>th</sup> AUGUST, 2015**

**P.C. :-**

1. Heard learned counsel for the applicant and the learned APP for State. None present for respondent No. 1 though duly served.
2. This application is preferred seeking leave under Section 378(4) of Criminal Procedure Code to file an appeal against the judgment and order of acquittal dated 25.02.2015 passed by the learned Judicial Magistrate First Class, Parbhani in S.C.C. No.1157 of 2009 for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881.
3. The learned counsel for the applicant submits that though the complainant has produced the documents on record, the same are not considered by the learned Judge of the Trial Court. The learned counsel further submits that the Court below has not considered that

a cheque can be presented number of times but the cause of action arose for filing of the complaint only when the demand notice is given to the accused and after service of notice on him, he has failed to repay the amount. The learned counsel further submits that the learned Judge of the Trial Court has not considered the provisions of Section 139 of the Negotiable Instruments Act, 1881.

4. It appears that the complainant has examined himself on oath before the Trial Court. It also appears that the respondent accused has not denied the transaction nor denied issuance of cheque in favour of the complainant. The learned judge of the Trial Court has concluded that the complainant has failed to prove that the cheque has been issued to discharge the legal debt or liability. It appears from the judgment of acquittal passed by the Court below that even the learned judge has not bothered to discuss the provisions of Section 139 of the Negotiable Instruments Act.

5. Apparently, there appears to be a *prima facie* case against the respondent accused. Hence, leave to file appeal as prayed for is granted.

6. **Admit.**

7. Since none present for the respondent accused even though he is duly served, issue notice of appeal to the respondent returnable on 25.09.2015. The learned APP waives service of notice of appeal for respondent No. 2.

8. Call Record and Proceedings.

**( V. K. JADHAV, J.)**

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