

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

Criminal Application No.1907 of 2015

Jayshree Bhimashankar Utge. .. **Applicant.**

Versus

Surendra s/o Kuldeep Ubale. .. **Respondent.**

Shri. S.P. Katneshwarkar Advocate, for applicant.

Shri. S.P. Urgunde, Advocate, for respondent.

CORAM: T.V. NALAWADE, J.

DATE : 4th AUGUST 2015

ORDER:

1) The application is filed for grant of leave under section 378(4) of the Code of Criminal procedure to file appeal against the order made by the learned Judicial Magistrate, First Class, AUSA in SCC No.102 of 2014. The matter was pending in the Court of the JMFC AUSA, District Latur. Both the sides are heard not only for grant of leave but also in the appeal itself as both the prayers are made in the same proceeding.

2) It was a private complaint filed under section 138 of the Negotiable Instruments Act and it came to be dismissed on 12-12-2014 for default and the accused is shown to be discharged. It appears that there was some special drive and the Judicial Magistrate felt that the complainant was not taking steps to make progress in the matter and the order came to be made.

3) The case involves cheque of Rs. 6 lakh. This Court has gone through the contents of the complaint. In view of the contents and as the matter is not decided on merits, liberty needs to be given to the complainant to take decision on merits.

4) The accused is required to contest the proceeding unnecessarily. In view of these circumstances, this Court holds that relief can be given to the complainant only subject to payment of some cost to the accused.

5) In the result, the application is allowed. Leave to file appeal is granted under Section 378(4) of the Code

of Criminal Procedure. The proceeding be registered as criminal appeal. That appeal is allowed. The order made by the Judicial Magistrate is set aside and the complaint is restored to its original number. This order is made subject to deposit of Rs.5000/- (Rupees Five Thousand) as cost by the original complainant in the Court of the JMFC AUSA within one month from today. If the amount is not deposited within the stipulated period the present proceeding stands dismissed. Both the sides are to appear before the Judicial Magistrate, First Class on 14th September 2015. Respondent-accused is allowed to withdraw the amount of cost if it is deposited in the Court of the Judicial Magistrate, First Class.

Sd/-
(T.V. NALAWADE, J.)

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