

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

Criminal Application No.2875 of 2014

Poonam w/o Deepak Pathak. .. **Applicant.**

Versus

Narsingrao Biraddar. .. **Respondent.**

Shri. Suhash P. Urgunde, Advocate, for applicant.

Shri. S.S. Thombre, advocate, for respondent.

CORAM: T.V. NALAWADE, J.

DATE : 17th AUGUST 2015

ORDER:

1) The application is filed under section 378(4) of the Code of Criminal Procedure, 1973 for grant of leave to file appeal against the judgment and order made in S.T.C. No.1713/2009 which was pending before the Judicial Magistrate, First Class, Latur. The Judicial Magistrate has acquitted the respondent. Heard learned counsel for the applicant. Some hearing was given to the learned counsel for the respondent. Seen the reasoning and the record.

2) The case was filed for offence punishable under section 138 of the Negotiable Instruments Act by the

complainant by contending that she had given amount of Rs.6.50 lakh to the accused as hand loan. This amount was paid by cheque and the cheque was presented in the account of the proprietor concern like "Apurva Marble and Granite" standing in the name of the accused. This cheque was encashed and amount was paid. It appears that from this account son of the accused by name Rameshwar had withdrawn amount of Rs. five lakh and this circumstance is held against the complainant. The Magistrate has held that the amount was in fact paid to Rameshwar and not to the accused and so there was no existing liability in respect of the cheque which was given to the complainant. In view such observations this Court holds that there is good arguable case to the applicant in appeal.

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

4) The appeal is admitted. Notice after admission, it is waived by the learned counsel for the respondent.

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

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