

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

Criminal Application No. 6039 Of 2014

Imran Umar Bagwan.

....Applicant.

Versus

Shaikh Altaf Mohmmadali.

....Respondent.

Shri. S.S. Chapalgaonkar, Advocate for applicant.

Shri. L.B. Palod, Advocate for respondent.

CORAM : T.V. NALAWADE, J.

DATED : 12th August, 2015.

ORDER :

1. The application is filed for grant of leave to file appeal under section 378(4) of the Code of Criminal Procedure against the judgment and order in Summary Trial Case No. 3062/2012, which was pending in the Court of Judicial Magistrate First Class, Ahmednagar. The Judicial Magistrate has acquitted the respondent for the offence punishable under section 138 of the Negotiable Instruments Act in a private complaint filed by the applicant.

2. Heard the learned counsel for the applicant and

seen the reasoning given is that statutory notice was not issued on correct address and the other reason is the defence of the accused that both the complaint and accused were doing some business jointly and some blank cheques were given by the accused and so existing liability is not proved. The remark of the post office shows that intimation was given. This circumstance ought to have been considering for presumption available under section 27 of the General Clauses Act and the law laid down by the Hon'ble Apex Court on this point. Further, presumption available in sections 118 and 139 of the Negotiable Instruments Act also needs to be considered and it needs to be ascertained as to whether the accused had rebutted the presumption. This Court holds that there is good arguable case for the applicant. In the result, the application is allowed. Leave is granted.

3. Appeal is admitted. Notice after admission, it is waived by the learned counsel for the accused.

[T.V. NALAWADE, J.]

mnp/