

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

CRIMINAL APPLICATION NO.431 OF 2015

Rajendra s/o Kishanlal Jaiswal,
Age: 59 years, Occ: Business,
R/o., Badnapur, Tq. Badnapur,
Dist. Jalna.

...Applicant

versus

The State of Maharashtra
& anr

...Respondents

.....
Mr. S.B. Ghute, Advocate for applicant
Mr. A.R. Kale, A.P.P. for respondent No.1
.....

CORAM : N.W. SAMBRE, J.

DATE : 9th MARCH, 2016

ORAL ORDER :

This is an application under Section 378(4) of Code of Criminal Procedure seeking leave to appeal.

2. The applicant, original complainant in a prosecution under Section 138 of Negotiable Instruments Act, suffered dismissal/acquittal of the accused.

3. While trying to make out a case for grant of leave, learned Counsel for applicant has invited attention of this Court to the factual matrix and the document Exh. 21-deed entered between the

parties so as to establish the liability under Negotiable Instruments Act. He submits that, the marriage mediator, who is complainant herein, was handed over the cheque for the purpose of encashment and was required to hand over cash towards expenses incurred in the marriage to the other side, however, the learned Magistrate has failed to interpret document Exh. 21 in favour of the applicant.

4. With the assistance, I have perused the judgment delivered by the learned Magistrate. It is not in dispute that the document Exh. 21 was not confronted to the accused, so as to seek admission of liability. The accused has admitted liability as against C.W.No. 2 and not the complainant, which is towards repayment of marriage expenses.

5. In my opinion, the learned Magistrate, in detail, has gone into factual matrix and has appreciated both oral and documentary evidence and has reached to the conclusion that no case for punishing the accused for the offence punishable under Section 138 of Negotiable Instruments Act is made out.

6. Having bestowed my thought to the submissions made, particularly in the light of detailed observations made by the learned Magistrate, it is noted that applicant herein failed to establish the fact

that the cheque in question was issued to him towards admitted debt. The applicant claimed that there has to be presumption is required to be rejected, in view of the scheme under section 138 of Negotiable Instruments Act. As such, special leave as is sought stands rejected. The application fails, stands rejected.

[N.W. SAMBRE, J.]