

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

CRIMINAL APPLICATION NO. 3685 OF 2015

Vishnu s/o Jijaba Gadekar,
Age: 55 years, Occ: Ex-service man & Agri.,
R/o. Dhangarjawalka, Tq. Patoda,
Dist. Beed. ...Applicant

versus

Narhari s/o Yadavrao Pawal,
Age: 63 years, Occ: Business & Agri.,
R/o. Chumbali, Tq. Patoda,
Dist. Beed. ...Respondent

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Mr. C.V. Thombre, Advocate for applicant
Mr. K. N. Farooqui, Advocate h/f Mr. N. L. Jadhav, Advocate for
respondent

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CORAM : N.W. SAMBRE, J.

DATE : 10th MARCH, 2016

ORAL ORDER :

This application is for seeking leave to appeal in the matter of acquittal of respondent in Summary Criminal Case No. 478 of 2007 for the offence punishable under Section 138 of Negotiable Instruments Act.

2. Mr. C.V. Thombre, learned Counsel for the applicant and Mr. Farooqui holding for Mr. N.L. Jadhav, learned Counsel for the respondent.

3. Mr. Thombre, learned Counsel for the applicant would urge that once cheque is issued, which is a negotiable instrument, presumption is in favour of the applicant that he hold cheque for admitted debt. According to him, just because the liability is denied by respondent, learned Court below has committed an error apparent on the face of record by observing that the cheque was issued for admitted liability and acquitted the respondent. He would then submit that acquittal, as such, is without any basis and this Court needs to reappreciate the entire evidence, in the background as was sought to be put forth under the provisions of Section 138 of the Negotiable Instruments Act.

4. Learned Counsel for the respondent opposed the prayer on the ground that learned Magistrate has rightly ruled in favour of the respondent as regards liability.

5. Having bestowed my thought to the submissions, it is required to be noted that the complainant filed his affidavit in support of the complaint at Exhibit-39. In the said examination in chief, he has stated that he has handed over the amount to the witness namely Vishnu Laxman Kale and Babasaheb Bapurao Mangad after he has sold jewellery for Rs. 1,50,000/- on 09/07/2007.

6. Learned Magistrate then noted that neither the fact about sale of jewellery and handing over the amount to the witnesses namely Vishnu Laxman Kale and Babasaheb Bapurao Mangad was established. The present applicant has failed to examine the said witnesses namely Vishnu Laxman Kale and Babasaheb Bapurao Mangad so as to establish that the amount as was claimed was handed over to the respondent.

7. Apart from above, the source of amount as is claimed is after sale of jewellery, however, no evidence whatsoever in the form of oral or documentary is brought on record so as to establish the fact that the applicant was holding amount of Rs.1,50,000/- on 09/07/2007. The said aspect was formed to be basis for acquittal of the respondent. In my opinion, having perused and considered the said evidence, in the back ground of evidence, as discussed herein before, no case for grant of leave to file appeal is made out. Leave to file appeal is refused. The appeal fails, stands dismissed.

[N.W. SAMBRE, J.]