

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH, NAGPUR**

**Criminal Application [APPA] No.423 of 2015**

(Javed Khan s/o Amannullah Khan  
vs.  
Smt. Usha w/o Jeevan Sachdeo and another)

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Office notes, Office Memoranda of  
Coram, appearances, Court's orders  
or directions and Registrar's orders.

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Court's or Judge's Orders

Shri C.F. Bhagwani, Advocate for the Applicant/Appellant.  
Shri J.Y. Ghurde, A.P.P. for Non-Applicant/Respondent No.2.

**CORAM : N.W. SAMBRE, J.**

**DATE : 21<sup>st</sup> JULY, 2016.**

Heard the learned Counsel for the applicant/  
appellant.

This is an application for grant of leave to prefer an appeal against the order of acquittal, thereby the non-applicant/respondent came to be acquitted for an offence punishable under Section 138 of the Negotiable Instruments Act by the learned Judicial Magistrate, First Class, Court No.26 vide verdict dated 27/04/2015.

While seeking leave to prefer an appeal, Shri Bhagwani, learned Counsel for the appellant has invited my attention to the fact that the transaction, in question, was based on the cheque payment made by the complainant to the accused. So as to substantiate said payment, he would invite my attention to the documents, such as Income Tax Returns of

the complainant at Exh.35 and Exh.36 and source of income of the appellant. He would then rely upon the presumption under Sections 118 and 139 of the Negotiable Instruments Act.

Upon perusal of the judgment of acquittal delivered by the learned Magistrate, it is to be noted that on the basis of documents, which were placed before the Court below, the Court below has reached to a conclusion that the present appellant without any money lending licence has indulged in an act of money lending. So as to substantiate the said observation, the learned Magistrate has noted that there are in all 11 cases filed by the present appellant against the accused.

Apart from above, the Income Tax Returns at Exh.35 and Exh.36 do not depict a specific entry for the payment made by the present appellant to the respondent-accused, as there is a general entry about amount of Rs.2,04,819/-.

In the above referred background, having seen the entire judgment of acquittal, in my opinion, no case for grant of leave is made out. The leave to prefer appeal is thus refused.

**JUDGE**

**C E R T I F I C A T E**

I certify that this order uploaded is a true and correct copy of the original signed order.

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P.A. to the Hon'ble Judge.