

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

CRIMINAL APPLICATION NO. 1268 OF 2016

Nilkant Bhawantrao Gaikwad

...APPLICANT

versus

Bajrang Venkatrao Kadam

...RESPONDENTS

.....
Mr. P.P. More, Advocate for applicant
Ms. Supriya L. Pansambal, Advocate holding for
Mr. V.D. Gunale, Advocate for respondent
....

CORAM : K.K. SONAWANE, J.

DATED : 9th JUNE, 2017.

Order :-

1. Heard learned counsel appearing for the parties.
2. The applicant – original complainant seeks special leave under section 378(4) of the Criminal Procedure Code (for short “Cr.P.C.”) to present the appeal against judgment and order of acquittal of respondent – accused dated 20-01-2016 passed in Summary Criminal Case No. 1899 of 2012, by learned Judicial Magistrate First Class, Latur for the offence punishable under section 138 of the Negotiable Instruments Act. There are allegations of dishonour of cheque.
3. The learned trial court appreciated the evidence adduced on record and arrived at conclusion that complainant failed to prove the charge under section 138 of the Negotiable Instruments Act against respondent. There was money transaction in between applicant and respondent on account of purchase of fertilizers. Respondent denied such monetary liability as alleged by the applicant. The attending

circumstances and documents produced on record demonstrate that there are points for arguments in this case. Therefore, reasonable opportunity is required to be given to the applicant to present the appeal against impugned findings of acquittal of the learned trial Court. In case, opportunity is denied it would cause prejudice and injustice to the applicant - complainant.

4. The learned counsel appearing on behalf of respondent-accused fairly conceded to grant leave and keep the proceedings of appeal for final hearing on merits, as expeditiously as possible, as record and proceedings of the matter from concerned court is received.

5. In such circumstances, I do not find any impediment to accord leave under section 378(4) of the Cr.P.C. for presentation of appeal on behalf of the applicant against judgment and order of acquittal of respondent – accused dated 20-01-2016 passed in Summary Criminal Case No. 1899 of 2012, by learned Judicial Magistrate First Class, Latur for the offence punishable under section 138 of the Negotiable Instruments Act. Accordingly, leave is granted. Appeal be registered.

6. The Registry to take requisite steps for further process.

7. List the appeal for final hearing on merits on 29-06-2017, after due compliance.

[K. K. SONAWANE]
JUDGE