

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

CRIMINAL APPLICATION NO.1149 OF 2017

Bharat Govind Rathod

.. Applicant

Versus

Uttam Yadav Aavhad and another

.. Respondents

Mr.Sachin S. Panale, Advocate for the applicant

Mr.D.S. Kulkarni, Advocate for respondent No.1

Mr.K.N. Lokhande, APP for the respondent No.2/State

CORAM : V.L.ACHLIYA, J.

DATED : 07.04.2017

P.C. :-

. The applicant has moved this application seeking leave to file an appeal against the judgment and order of acquittal dated 23.01.2017 passed by learned J.M.F.C., Court No.6 Aurangabad in S.C.C. No.4173/2015.

2. Heard learned counsels for the applicant and respondents and perused the impugned judgment and order dated 23.01.2017 passed by the trial Court.

3. In nutshell it is the contention of the learned counsel for the applicant that the accused has admitted the issuance of cheque in favour of complainant as well as his signature on the cheque. He has taken a plea that the cheque was obtained as a security towards the loan

advanced. The same has been misused by the complainant. He submits that the accused has not entered into the witness box nor adduced evidence to rebut the presumption under section 139 of the Negotiable Instrument Act.

4. As against the submissions advanced by learned counsel for the applicant the learned counsel for respondent/accuse submits that reasons and findings recorded by the trial Court are fully in consonance with the evidence on record. He submits that the cheque in question was obtained as a security at the time of obtaining hand loan and execution of hand loan receipt. The amount advanced agreed to be repaid in six months. He submits that though the period of six months was not over the cheque was presented by filing the blank spaces. Number of alterations and corrections were made on that cheque. There was no reason for Bank Officer to put his signature over the cheque.

5. In this submission learned counsel for the applicant submits that the Bank Officer was summoned at the instance of the complainant. He has deposed before the Court that as the complainant and accused were customer of the same bank and he was knowing them, he called accuse as some corrections with signatures was found to be made on cheque remind for realization

therefore, he called the accused and confirmed the issuance of cheque and his signature and also obtained his signature at places where the corrections were made.

6. Having appreciated the submissions advanced I am of the view that arguable case has been made out to be considered in appeal. It requires to be explained as to whether the accused has rebutted the presumption under Section 139 of the Negotiable Instrument Act. I am, therefore, inclined to allow the application seeking leave to file an appeal. The application is allowed. Appeal be registered and place for admission on 13.04.2017. Both the parties shall remain present on the next date.

[V.L.ACHLIYA,J.]