

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

CRIMINAL APPLICATION NO.2055 OF 2017

Kiran s/o. Rameshlal Bhandari,
Age : 34 years, Occ. Business,
r/o. 7, Madan Niwas,
Swarsangam Housing Society,
Priya Nagar, Aurangabad ..Applicant

Vs.

Narayan s/o. Purushottam Sarada,
Age : 44 years, Occ. Business,
r/o. Mahesh Apartment, B-3,
B-Wing, Prabhat Colony,
Behind Mahesh Auto,
Adalat Road, Aurangabad ..Respondent

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Mr.S.C.Arora, Advocate for applicant
Mr.S.S.Rathi, Advocate for respondent

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**CORAM : SANGITRAO S. PATIL, J.
DATE : AUGUST 08, 2017**

PER COURT :

The original complainant has filed this application seeking leave to file appeal against the judgment and order dated 20.02.2017 passed in S.C.C. No.5639 of 2013 by the learned Judicial Magistrate F.C. (1st Court), Aurangabad, whereby the respondent has been acquitted of the offence punishable under Section 138 of the Negotiable Instruments Act.

2. The learned Counsel for the applicant submits that the presumption attached to the cheque signed by the respondent has not been rebutted by the respondent. The trial Court wrongly relied on the defence witness namely, Chandrasen Rajeshirke. He submits that the defence raised by the respondent that his blank cheques were kept with the firm namely, Gangotri Investment, and the same were misused by the applicant, is not natural and probable and that has been wrongly accepted by the trial Court. He submits that there are good grounds for assailing the judgment of acquittal passed by the trial Court. He, therefore, prays that leave to file the appeal may be granted.

3. On the other hand, the learned Counsel for the respondent submits that the applicant himself admitted that Chandrasen Rajeshirke was serving in the firm namely, Gangotri Investments. The said defence witness has clearly stated that the blank cheques signed by the respondent were in the custody

of Gangotri Investments, which have been misused. He submits that the applicant failed to discharge the initial burden that the cheque was issued by the respondent in discharge of any legally enforceable debt or liability. According to him, the learned Magistrate has rightly considered the evidence and rightly acquitted the respondent. He submits that there is no case for grant of leave to file the appeal against the judgment of acquittal.

4. The amount of cheque in question is Rs.6,00,000/-. Indisputably, the said cheque was signed by the respondent. A demand notice was sent to the respondent calling upon him to pay the the cheque amount. The respondent has not replied that notice. The respondent did not make it clear by replying the notice, that blank cheques signed by him were kept with Gangotri Investments and the same were misused by the applicant. The signing of the cheque is not in dispute. Heavy burden lies on the person

signing the cheque to rebut the presumption attached to the genuineness of the cheque as contained under Section 139 of the Negotiable Instruments Act.

5. In my view, it will be necessary to extend the applicant an opportunity to agitate the claim before this Court in respect of the cheque in question, by challenging the judgment passed by the trial Court.

6. Leave to file the appeal, therefore, is required to be granted.

7. Hence, the order :-

8. The applicant is granted leave to file the appeal against the impugned judgment of acquittal passed by the trial Court.

9. Office shall register the appeal. After registration of the appeal, place it for admission on 04.09.2017.

[SANGITRAO S. PATIL, J.]

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