

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

CRIMINAL APPLICATION NO.3226 OF 2016

Kiran Satishlal Mahtole

.. Applicant

Versus

Suresh Tarachand Mahtole

.. Respondent

Mr.Ramdas K. Bhakade, Advocate for the applicant

Mr.S.S. Varma, Advocate for the respondent

CORAM : V.L.ACHLIYA, J.

DATED : 24.04.2017

P.C. :-

. The applicant has moved this application seeking leave to file appeal against the impugned judgment and order dated 04.05.2016 passed by the trial Court.

2. Heard learned counsel for the applicant and counsel representing the respondent and perused the R & P of the trial Court.

3. It is the say of the learned counsel for the applicant that in the year 2007 hand loan of Rs.47,000/- advanced by the complainant to accused. The loan was advanced on 15.03.2007. The amount was paid by cheque dated 15.03.2007. The amount was to be repayable within six months. The accused has not repaid the hand loan

amount and all the while requested for grant of time to repay the amount. Ultimately on 05.09.2013 the accused issued cheque bearing No.690902 of Rs.47,000/- towards the repayment of hand loan which was taken in the year 2007. The said cheque was returned with endorsement "INSUFFICIENT FUNDS". Therefore the complainant issued statutory notice under Section 138 of the Negotiable Instrument Act. The notice was issued on business address as well as residential address. The notice issued on the residential address returned with remark "incomplete address". However the notice issued at the business address of accuse was duly served. Despite service of notice the accused failed to pay the amount within stipulated period. Therefore, complainant filed complaint against accuse. It is the contention of the learned counsel for the applicant that though complainant has proved his case still the trial Court has dismissed the complaint and acquitted the accused by holding that the complainant has failed to prove that the cheque in question was issued in discharge of legal liability and claim is time barred.

4. On the other hand learned counsel for the respondent supported the judgment and order passed by the trial Court and submits that there is no case to grant leave to file appeal. Learned counsel for the respondent

submits that in the cross examination the complainant has admitted the certain repayments were made by the accused towards the hand loan.

5. Having appreciated the submissions advanced in the light of pleadings and evidence on record, I am of the view that the case has been made out to grant leave to file appeal against the impugned judgment and order. Accordingly the application is allowed in terms of prayer Clause-C. The appeal be registered and list the matter for admission on **02.05.2017**.

[V.L.ACHLIYA, J.]