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

**CRIMINAL APPLICATION NO.477 OF 2016**

Pramod Trambakrao Pitale  
aged about 64 years, Occ: Agri.,  
R/o. Shendurjana Ghat, Tq. Warud,  
District Amravati. ..APPLICANT

VERSUS

Dattatraya Krushnarao Pitale,  
aged about 54 years, Occ: L.I.C.  
Agent, R/o. Plot No.13, Dandge  
Layout, Shankar Nagar, Nagpur. ..RESPONDENT

Mr B.N. Jaipurkar, Advocate for applicant;  
Mr M.R. Joharapurkar, Advocate for respondent

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

**DATE : 17th MARCH, 2017**

**ORAL ORDER :**

Heard respective Counsel.

2. In Summary Criminal Case No. 1930 of 2006, parties hereto are closely related. The respondent was prosecuted for the offence punishable under Section 138 of the Negotiable Instruments Act, as cheque for amount of Rs. 2,00,000/- issued by him towards return of hand loan came to be dishonoured.

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3. Learned Judicial Magistrate, First Class (Court No.2) Warud, in the aforesaid case, vide judgment and order dated 15<sup>th</sup> March, 2011, acquitted the respondent-accused.

4. Mr. Jaipurkar, learned Counsel for the applicant has questioned the acquittal on the two grounds; (a) overlooking of presumption under Sections 118 and 139 of the Negotiable Instruments Act and (b) the fact as regards rebuttal of presumption is not properly appreciated.

5. It is required to be noted the case of complainant is, the amount of hand loan was taken for operation of his mother by the accused, whereas the accused, by examining himself and his witness, has brought on record that he has sold his agricultural land and substantial amount was deposited by him in the I.D.B.I. Bank, as could be appreciated from the evidence of DW-2 Vijay, employee of the said bank.

6. It is then to be noted that the accused

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having examined himself and employee of the bank, in my opinion, has rebutted presumption under Sections 118 and 139 of the Negotiable Instruments Act. It is pointed out by present applicant to prove that cheque was issued and there is legally enforceable liability.

7. In my opinion, appreciation of entire evidence, learned Magistrate, while ordering acquittal including that of rebuttal of presumption referred supra, transaction as has been alleged and material as is placed on record, has been rightly appreciated. No case for interference is made out. The application lacks merit and stands rejected.

**(N.W. SAMBRE, J.)**

Tupe