

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.191 OF 2016
(For Leave to Appeal)
CRIMINAL APPEAL NO. OF 2016**

Atmaram Ghanshyam Tejawani
(Since deceased through his LRs)
1) Naresh Atmaram Tejawani & Anr.

.. Applicants

Vs.

Ravindra Abhimanyu Kene & Anr.

.. Respondents

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Ms.Gauri Godse a/w. Mr.Rohit Joshi, Advocate for the Applicants.
Mr.Pankaj J. Das, Advocate for Respondent No.1.
Ms.V.S. Mhaispurkar, APP for the Respondent - State.

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CORAM : PRAKASH D. NAIK, J.

DATED : FEBRUARY 20, 2018.

P.C. :

This is an application for grant of leave under Section 378(2) of the Code of Criminal Procedure against the judgment and order dated 4th February, 2016, passed by 4th Jt. Civil Judge, J.D. & J.M.F.C., Ulhasnagar, in S.C.C. No.1130 of 2013. Applicant is the original complainant. Applicants are legal heirs of the original complainant who expired during the pendency of this application. Application for bringing the legal heirs on record is already allowed by this Court. Respondent no.1 was prosecuted

for an offence punishable under Section 138 of Negotiable Instruments Act, 1881.

2 Learned Judicial Magistrate First Class, Ulhasnagar, was pleased to acquit the respondent. Trial Court has observed that in the cross-examination of the complainant, the accused has rebutted the presumption under Section 139 of the Negotiable Instruments Act, 1881.

3 Learned advocate for the applicant submits that the accused have failed to rebut the presumption. There is no plausible explanation or defence raised by the accused as to for what reason the impugned cheque was issued by him. The defence of the respondent – accused is that there is a civil dispute between the parties and the cheque was not issued for any liability.

4 There is no dispute that the cheque was signed by the respondent–accused and the same was dishonoured when deposited. The accused did not adduce any evidence in his defence.

5 Learned advocate for the respondent submitted that on the basis of the cross-examination, it is brought on record that the complainant was not aware about the transaction and has not furnished the details about the issuance of cheque. It is submitted that in the cross-examination, the accused has successfully rebutted the resumption.

6 Considering the issues raised by the applicant, I am of the opinion that case for grant of leave is made out. The submissions advanced by both the parties are required to be considered at the stage of final hearing.

7 Hence, I pass the following order:

:: ORDER ::

- (i) Leave to file an Appeal against judgment and order dated 4th February, 2016, passed by 4th Jt. Civil Judge, J.D. & J.M.F.C., Ulhasnagar, in S.C.C. No.1130 of 2013, is granted;
- (ii) Appeal admitted;
- (iii) Call for record and proceeding.

(PRAKASH D. NAIK, J.)