

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

**CRIMINAL APPLICATION (APPA) NO.814/2017**  
**&**  
**CRIMINAL APPEAL NO.610/2018**

1. Vanita Wd/o Sudhakar Daf,  
 aged about 60 Yrs., Occu. Household,  
 R/o Wathoda, Post Kisarsar, Tah. Warora,  
 Distt. Chandrapur.

2. Amol S/o Sudhakar Daf,  
 aged about 37 Yrs., Occu.

3. Jagdish S/o Sudhakar Daf,  
 aged about 33 Yrs., Occu. Service,  
 R/o Wathoda, Post Kosarsar,  
 Tah. Warora, Distt. Chandrapur.

..Appellants.

..Vs..

Anil Vinayak Umate,  
 aged about 48 Yrs., Occu. Agriculturist  
 & Business, R/o Snehal Nagar, Infront  
 of Clinic of Dr. Verma, Near house of  
 Shri Pramod Shende, Ex-MLA, Mahila  
 Ashram, Wardha, Tah. & Distt. Wardha.

..Respondent.

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 Shri S.D. Chopde, Advocate for the appellants.  
 Shri V.M. Gadkari, Advocate for the respondent.  
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**CORAM : Z.A. HAQ, J.**

**DATE : 14.9.2018.**

**CRIMINAL APPLICATION (APPA) NO.814/2017**

1. Though the learned Advocate for the respondent has objected for permitting the applicant Nos.2 and 3 to file and prosecute the appeal as they are not class-I heirs, considering the facts of the case and keeping the objection raised on behalf of the respondent open for consideration at appropriate stage, the applicants are granted leave to file appeal to challenge the judgment

passed by the learned Magistrate by which complaint filed by original complainant under Section 138 of the Negotiable Instruments Act, 1881 (for short “the Act of 1881”) is dismissed. The criminal application is **allowed** accordingly.

ORAL JUDGMENT IN CRIMINAL APPEAL NO.610/2018

2. Appeal is taken up for hearing.

3. Heard.

4. **ADMIT.**

5. By the impugned judgment, the complaint filed by Roshan Sudhakar Daf under Section 138 of the Negotiable Instruments Act, 1881 is dismissed under Section 256 of the Criminal Procedure Code on the ground of death of the complainant. The appellants claim that they are legal heirs of respondent / complainant and are entitled to prosecute the complaint. To support the submission, learned Advocate for the appellants has relied on the judgment given by this Court in the case of *Anup Jagdish Agarwal V/s. Mrs. Nilkunj Lalit Shah & Ors.* reported in **2010 ALL MR (Cri) 2545**.

6. Though the learned Advocate for the respondent has submitted that the appellant Nos.2 and 3, being brothers of original complainant cannot be said to be class-I heir, in my view, this objection need not be examined in the

present proceedings and at the behest of the respondent / accused. In the proceedings under Section 138 of the Act of 1881, the accused, if convicted, will be liable to pay the amount of fine / compensation as would be ordered by the learned Magistrate and the order passed in these proceedings will not determine the apportionment of the amount. The learned Advocate for the appellants also agree to this position. If at all, the question of disbursement of amount arises, the objection of the respondent can be determined at that stage.

7. Considering the proposition laid down in the judgment given in the case of *Anup Jagdish Agarwal V/s. Mrs. Nilkunj Lalit Shah & Ors. (supra)*, the following order is passed:

- (i) The impugned order is set aside.
- (ii) The Criminal Complaint Case No.566/2013 is restored on the file of Judicial Magistrate First Class, Warora.
- (iii) The appellants are permitted to prosecute the complaint as complainants.
- (iv) The appellants and the respondent shall appear before the Judicial Magistrate First Class, Warora on 22<sup>nd</sup> November, 2018 at 11 a.m. and abide by further orders in the matter.

8 The appeal is **allowed** in the above terms.

In the circumstances, parties to bear their own costs.

JUDGE