

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

**APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO.151 OF 2019
WITH APPLN/897/2020 IN ALP/151/2019**

PRAKASH S/O. CHIMAJI SHIRSATH
VERSUS
DIPAK @ DILIP S/O. SHIVLAL GUGALE

...
Advocate for Appellant : Mr. Kulkarni Akshay D.
Advocate for Respondent : Mr. N.C. Garud
...

CORAM : MANGESH S. PATIL, J.

DATE : 02.03.2021

PER COURT :

Heard both the sides.

2. The original complainant has filed this Application under Section 378 (4) of the Code of Criminal Procedure, seeking leave to challenge the judgment and order whereby the respondent has been acquitted by the learned Magistrate of the offence punishable under Section 138 of the Negotiable Instruments Act.

3. After hearing both the sides, it transpires that the learned Magistrate has acquitted the respondent solely on the ground of failure of the applicant complainant to discharge the liability to prove that the cheque in question was issued for discharge of some legally enforceable debt or liability.

4. It appears from the observations in the impugned judgment particularly the paragraph Nos. 24 to 31, the reasoning resorted to by the learned Magistrate is to the effect that there was difference in the ink in which the contents of the cheque were filled. He would further pointed out that the applicant complainant had come with a case that he had borrowed

the money from a bank for being paid to the respondent accused. The transaction having allegedly taken place in the year 2009 it was a huge amount of Rs.2,10,000/-. There was no evidence to show that the applicant complainant was economically well off so as to lend such a huge money. Even he was not aware about the family background of the respondent accused. It was improbable that in such eventuality he would have lend such a huge amount to the respondent accused. Having resorted to such reasoning the learned Magistrate observed that there was reasonable and serious doubt as to if the cheque could have been issued to satisfy a legally enforceable debt.

5. Needless to state that it is a matter of appreciation of evidence which can be resorted to at the final hearing. Pertinently, the learned Magistrate has come to the conclusion that rest of the ingredients for constituting the offence were duly made out by the applicant complainant.

6. It is in view of such a state of affairs, it would be appropriate to grant leave to prefer an Appeal.

7. There is one more reason. The applicant complainant has also filed Criminal Application No.897/2020, in all probability because of the reasoning resorted to by the Magistrate, seeking permission to lead additional evidence in respect of papers regarding borrowing of loan by him.

8. Considering all the aforementioned state of affairs, the Application is allowed. Leave is granted.

(MANGESH S. PATIL, J.)