

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

CRIMINAL APPLICATION (APPA) NO.734 OF 2021

Asif s/o Shaukat Qureshi ..vs.. Shailen s/o Harsukhlal Mewar.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri M.M. Papinwar, Advocate for applicant.

CORAM : VINAY JOSHI, J.
DATED : 17/12/2021

Heard.

2. This is an application seeking special leave to appeal challenging the order of acquittal relating to offence punishable under Section 138 of Negotiable Instrument Act. Initially, the applicant has filed private complaint SCC No.20722 of 2013 against the respondent for the offence punishable under Section 138 of the Negotiable Instrument Act. After holding full fledged trial, the learned Magistrate came to the conclusion that the applicant has established all essential ingredients to constitute the offence punishable under Section 138 of the Negotiable Instrument Act and accordingly by judgment and order dated 11/08/2017 convicted the respondent.

3. Being dis-satisfied, the respondent filed Criminal Appeal No.249 of 2017 challenging the order of conviction. In the appeal, it was held that the complainant failed to establish essential ingredients including issuance of statutory notice and accordingly

order of conviction was reversed.

4. The applicant's learned Counsel took me through impugned judgment as well as judgment of the trial Court. The Appellate Court has reversed all the findings recorded by the trial Court. It is also held that the notice was not duly served. It reveals that the applicant has examined witness from postal department to prove service of notice. The copy of registered post as well as acknowledgment with stamp is produced. There are arguable grounds on merits. Moreover at first instance, the learned Magistrate held that the offences are proved. The matter requires reconsideration. In view of that leave to appeal granted.

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5. Heard.

6. **ADMIT.**

7. Issue notice to the non-applicant, returnable after four weeks.

8. In the meantime, the amount of part compensation of Rs.57,500/- deposited in appeal shall not be disbursed.

9. Inform concerned accordingly.

JUDGE