

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

**912 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO.57 OF  
2019**

**AMRUTABAI GANGALAL YADAV  
VERSUS  
TAIBAI PANDURANG CHAUDANTE**

Mr. Pravin N. Kalani, Advocate for the applicant  
Mr. S. S. Panale, Advocate for the respondent

**CORAM : KISHORE C. SANT, J.**

**DATE : 06<sup>th</sup> October, 2022**

**P. C.**

1. Heard learned advocate for the parties. Perused the record and proceeding.

2. Issuance of cheque at the hands of respondent-accused is not denied. Learned advocate for the applicant, therefore, submits that hence the cheque is issued & presumption under Section 139 of the Act the cheque is issued towards discharge of legally enforceable debt and liability. This aspect is not properly considered by the learned trial court.

3. Learned advocate for the respondent on the other hand submits that unless initial burden is discharged by the complainant to show that the hand loan was in fact advanced or disbursed by the complainant no presumption can be drawn. He pointed out contradiction in the complaint and the evidence of the complainant. Though in the complaint it is stated that hand loan of Rs.80,000/- was given in the presence of two panchas however, in the cross-examination she admitted that when the alleged loan was given, there was no witness present. After considering submissions of the parties, this court finds it necessary to grant leave to file appeal against acquittal. Since the case is in respect of Section 138 of the N. I. Act, it is necessary for the complainant to get one more opportunity. Therefore, leave is granted. Office is directed to register the appeal. Issue notice to the respondents, returnable on 01-12-2022. Mr. Panale, advocate waives service of notice for the respondent in the appeal.

(3)

**apln57.19**

4. Considering the nature of appeal, parties are put to notice that if time permits, the matter will be taken up for final hearing.

5. Stand over to 01-12-2022.

**[KISHORE C. SANT, J.]**

VishalK/apln57.19