

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

APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO.57 OF 2022

**KUSVAHA TRIVENI PRASAD
VERSUS
SHINDE DATTATRAY SATU**

....
Ms. Pratiksha C. Kale, Advocate h/f Mr. Sandip R. Andhale,
Advocate for the Applicant
....

CORAM : SHRIKANT D. KULKARNI, J.

DATE : 5 AUGUST, 2022

PER COURT:-

. Heard Ms. Pratiksha Kale holding for Mr. S.R. Andhale, learned counsel for the applicant. She invited my attention to the impugned order passed by the learned Additional Chief Judicial Magistrate, Court No.17, Ahmednagar in S.C.C. No. 1962 of 2017. She pointed out that the respondent/accused has admitted his signature on the cheque. The cheque is on record. The applicant has complied with the legal requirements before initiating the proceedings under Section 138 of the Negotiable Instruments Act, 1881. She submitted that the presumption is in favour the applicant/complainant, which is completely overlooked by the Magistrate and accepted the defence put forth by the

respondent/accused without having material on record. She submitted that the order of acquittal of the respondent/accused is grossly erroneous in the eye of law. She, therefore, urged to grant leave.

2. Having regard to the submissions of Ms. Pratiksha Kale, learned counsel for the applicant, I have gone through the impugned judgment and order rendered by the learned Additional Chief Judicial Magistrate, Court No.17, Ahmednagar in S.C.C. No. 1962 of 2017.

3. On going through the impugned judgment and order, more particularly, paragraph Nos. 14 to 16, it would reveal that the learned Magistrate has completely lost sight on presumptions available in favour of the applicant /complainant in a case of dishonour of cheque. The defence of the respondent/accused was that the applicant/complainant had obtained his signature on the blank cheque with the help of his friend. However, there is absolutely no iota of evidence to that effect as appearing from the reasons recorded by the learned Magistrate. The learned Magistrate seems to have concluded that the applicant/complainant has failed to

establish legal enforceable liability and thereby dismissed the complaint.

4. Having regard to the above scenario and points raised, it is necessary to grant leave to file an appeal. Hence, the following order.

ORDER

- (i) The application is hereby allowed.
- (ii) The Registry to take further steps for registration of the appeal as per procedure, and thereafter, it be placed before this court for admission.
- (iii) The application is disposed of accordingly.

[SHRIKANT D. KULKARNI]
JUDGE

S.P Rane