

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

57 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO.49 OF 2020

**SUDHAKAR S/O. GOVIND SHELAR
VERSUS
MAYURESH S/O. MADHAVRAO KULKARNI**

Ms.L.R. Thakur h/f. Ms. Savita Solunke, Advocate for the applicant.

**CORAM : KISHORE C. SANT, J.
DATED : 19.12.2022**

PC :-

01. This is an application seeking leave to file appeal against acquittal recorded by the learned JMFC, Rahuri dated 09.03.2020 in SCC No. 743 of 2013. The complaint was filed for the offence punishable under section 138 of the Negotiable Instruments Act. The respondent had issued a cheque for an amount of Rs. 5 lakhs to the complainant. However, same was dishonoured. The learned Trial Court held that the liability appears to be arising out of contractual liability, however, there was no sufficient evidence to show that it was recoverable debt. It is submission of learned Advocate that the learned Trial Court has not considered the presumption under section 139 of the Negotiable Instruments Act and has wrongly recorded the acquittal. Though respondent is served, none appears for him. This Court finds that case is made out to grant leave to file appeal against acquittal. Hence, application seeking leave to file appeal is allowed.

02. Office to register the appeal.

03. After registration, learned Advocate for the appellant to seek circulation of the matter.

[KISHORE C. SANT, J.]