

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

APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO.19 OF 2021

**KUMAR MASAJI GHANSAWADH
VERSUS
EKNATH UDHAVRAO JAGTAP**

....

Mr. A.S. Deshmukh, Advocate for the Applicant
Mr. G.J. Pahilwan, Advocate for the Respondent

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CORAM : SHRIKANT D. KULKARNI, J.

DATE : 17 AUGUST, 2022

PER COURT:-

. It is an application for leave to file an appeal moved by the applicant by taking aid of Section 378(4) of the Code of Criminal Procedure.

2. Heard Mr. A.S. Deshmukh, learned counsel for the applicant and Mr. G.J. Pahilwal, learned counsel for respondent. Perused the impugned judgment and order of conviction rendered by the learned Judicial Magistrate, First Class, Court No.2, Jintur, Dist. Parbhani in S.C.C. No. 424 of 2017 and judgment and order passed by the learned Sessions Judge, Parbhani in criminal appeal No. 36 of 2019, whereby the conviction passed by the learned Magistrate came to be struck down.

3. On going through the judgment and order of conviction rendered by the learned Magistrate, it is *prima facie* evident that the learned Magistrate after appreciating the facts and evidence on record arrived at conclusion that the cheque in question vide exhibit 27 was issued by the respondent/accused. It was presented for encashment. It came to be dishonoured. It is further observed by the learned Magistrate that respondent/accused while recording his statement under Section 313 of the Code of Criminal Procedure has admitted that he has handed over the cheque to the present applicant/complainant. He has even admitted his signature. The respondent/accused has come out with a specific defence that the blank cheque was given by him to the complainant and subsequently it is alleged to have been misused. In the above observations and findings, the learned Magistrate was pleased to convict the respondent/accused under Sections 138 of the Negotiable Instruments Act, 1881. That judgment and order was challenged before the Sessions Judge at Parbhani.

4. On going through the judgment and order passed by the Sessions Judge, Parbhani in criminal appeal No. 36 of

2019, it is evident that the learned Sessions Judge has given undue importance to the payment of Rs.1,00,000/- to the accused by observing that there was no documentary evidence regarding such payment. The cheque in question and the issuance thereof is admitted by the accused coupled with his signature. As such, presumption stands in favour of complainant, which was completely overlooked by the Sessions Judge.

5. The findings recorded by the learned Sessions Judge *prima facie* appear to be perverse having regard to the evidence on record. It is necessary to grant leave to file appeal.

ORDER

- (i) The application is hereby allowed.
- (ii) The Registry is directed to register the appeal as per procedure and it be numbered and place before the court for admission.
- (iii) Stand over to 07.09.2022.

[SHRIKANT D. KULKARNI]
JUDGE