

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

CRIMINAL APPLICATION NO. 6634 OF 2016

Dr. Baburao Bapuji Tanpure Co-operative
Sugar Factory Limited through
its authorized officer
Shri Mansub Asaram Warkad

.. Applicant

Versus

The State of Maharashtra and another

.. Respondents

Mr. Ahwin V. Hon, Advocate for the Applicant.
Mr. S. W. Munde, APP for Respondent No. 1.
Mr. V. P. Narwade, Advocate for Respondent No. 2.

CORAM : KISHORE C. SANT, J.

DATED : 16th DECEMBER, 2022.

P. C. :-

1. Heard learned advocate for the applicant, learned A.P.P. and learned advocate for respondent No. 2.
2. Learned advocate for respondent No. 2 relies upon the judgments of the Hon'ble Apex Court in a case of **Khedu Mohton Vs. State of Bihar** reported in **1971 AIR (SC) 66** and another judgment in a case of **State of Andhra Pradesh Vs. S. Narasimha Kumar and others** reported in **2006 AIR (SC) 2924**.
3. Learned advocate for respondent No. 2 submits that, since the

original proprietor is no more and now, the proceeding has to abate against him. The son of the proprietor cannot be now prosecuted since this is a criminal proceeding.

4. Learned advocate for the applicant pointed out that, in fact, the complaint was lodged against the proprietary firm namely Lalchand and Company, Kopargaon wherein, Smt. Ashadevi was shown as proprietor. After her death, now her son who is now proprietor is added. He submits that, this is special statute and also for the reason that it is the proprietary firm which is been prosecuted. Therefore, the proceeding need not be abated.

5. By way of this application, the applicant is seeking leave to file an appeal against acquittal challenging the judgment and order dated 30.08.2016 passed by the learned Judicial Magistrate First Class, Court No. 2, Rahuri in S.C.C. No. 1263/2011 by which the accused/respondent No. 2 is acquitted of the offence punishable under Section 138 of the Negotiable Instruments Act. It is the case of the applicant that the cheque was issued towards liability to the sugar factory for an amount of Rs. 14,95,268/- (Rs. Fourteen Lakh Ninety Five Thousand Two Hundred Sixty Eight only). The said amount was towards purchase of sugar from the complainant factory. He submits that, the learned Trial Court has recorded the finding of acquittal by

taking hyper technical approach.

6. Considering the argument and judgment, this Court feels that it is necessary to grant leave to file an appeal. Hence, the application is allowed. Leave is granted to file an appeal against acquittal.

7. Office to register this application as appeal and to place it for further orders on 13.01.2023.

(KISHORE C. SANT, J.)

P.S.B.