

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 193 OF 2019

UTTAM S/O. SHANKARRAO AMRUTRAO
VERSUS
THE STATE OF MAHARASHTRA AND ANR

...

Advocate for Appellant : Mr. Patne Santosh N.
APP for Respondent No.1/State : Mr. Y. G. Gujrati

...

CORAM : KISHORE C. SANTI, J.

DATE : 7th DECEMBER 2022.

Per Court :

Heard.

1. The Appellant seeks leave to file appeal against acquittal challenging the judgment and order acquitting Respondent No.1 and 2 from the offence punishable under Section 138 of the Negotiable Instruments Act. From Paragraph No.21 of the judgment, it is seen that the Court has acquitted the accused only on the ground that it appears to be doubtful as to whether the Complainant was in a position to give hand loan of Rs.50,000/- to his cousin, when he himself is a debtor of

the bank. Thus, the learned trial Court held that the probable case is made out by the accused and thus the presumption is rightly rebutted by the defence.

2. Considering this, leave is granted to file appeal against acquittal challenging the judgment and order dated 17.04.2019 passed by the learned Additional Sessions Judge, Osmanabad in Criminal Appeal No.41/2014.

3. The judgment of acquittal is delivered by setting aside judgment in the trial Court. The trial Court i.e. Court of Judicial Magistrate First Class, Tuljapur, Dist. Osmanabad had found the Respondent guilty of an offence punishable under Section 138 of N.I. Act vide judgment and order dated 24.03.2014 in S.C.C. No. 824/2012. A case is made out to admit the appeal. Appeal be admitted. Issue notice to the Respondents on admission of the appeal, returnable on 16.01.2023.

4. Call record and proceedings.

[KISHORE C. SANT, J.]

Najeeb.