

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPA) NO.959/2019

IN
CRIMINAL APPEAL NO. /2019

Pravin Shridhar Daterao

Vs.

Sharad Shriram Gawande

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. P. A. Kadu, Advocate for applicant.

Mr. P. V. Navlani, Advocate for non-applicant.

CORAM : AVINASH G. GHAROTE, J.

DATE : 14/06/2022

This application seeks leave to file appeal against the judgment of the learned Judicial Magistrate First Class dated 09.09.2019 whereby the non-applicant has been acquitted of the offence punishable under Section 138 of Negotiable Instruments Act on the ground that the applicant/complainant has failed to establish source of the funds out of which, the cheque amount is claimed to have been given to the accused. It is submitted that in the complaint itself the source for securing funds has been disclosed in as much as it is stated that Rs.2.4 Lakhs were available with the applicant on account of sale of land, Rs.2,00,000/- were available as agriculture income and Rs.3,00,000/- were borrowed from Prafulla Raut, who has examined as PW 6. It is

therefore, submitted that considering the evidence led a finding could not have been rendered regarding the absence of explanation as to the source of funds. Even otherwise, it is submitted by relying upon ***Kalamani Text and another vs. P. Balasubramanian, 2021 (5) SCC 283*** that once the issuance of the cheque and signature thereupon is admitted the reverse onus mandates that the presumption under Section 139 of the Negotiable Instruments Act has to be rebutted by the accused which has not been so done in the instance case, considering which, though Mr. Navlani, learned counsel for the non-applicant vehemently opposes, contending that the source of funds have not been established, in my considered opinion, case for leave is made out. Hence the following order.

ORDER

- (a) Application is allowed.
- (b) Leave is granted.
- (c) Office to register the appeal.
- (d) Upon registration of the appeal, **Admit.**
Call Record and Proceedings.

Mr. Navlani, learned counsel for non-applicant waives service of notice on merits.

JUDGE