

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

955 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO.10 OF 2020

**SAYAJI GOVINDRAO BOCHARE
VERSUS
JAGANNATH VINAYAK BHARAD**

Mr.Ketan D. Pote h/f. Mr. A.G. Ambetkar, Advocate for the applicant.

**CORAM : KISHORE C. SANT, J.
DATED : 10.01.2023**

PC :-

01. Though notice is already served on the respondent, no one appears. Therefore, again notice was issued for final disposal by order dated 22.11.2022. Office report shows that the respondent is served and still none appears. Therefore, the matter is heard in absence of the respondent.

02. Learned Advocate for the applicant argued that though this is a case under section 138 of the Negotiable Instruments Act, still the Court has not properly considered the provisions of section 139 of the Negotiable Instruments Act i.e. presumption. He points out that the signature on the cheque is admitted by the accused/respondent. Only reason assigned for the acquittal is that the informant was a retired employee and he was not in a position to lend the amount of Rs.3,60,000/-. The complaint has not proved that he has ability to pay that much amount by showing that that much amount was standing in the account of the informant.

03. On going through the judgment, it is clear that case is made out to allow the application seeking leave to file appeal.
04. Leave granted. Application for leave to file appeal is allowed.
05. Admit the appeal.
06. After registration of the appeal, issue notice to the respondent, returnable on 31.01.2023.

[KISHORE C. SANT, J.]