

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

**911 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO.8 OF
2023**

**VIKAS SO RAOSAHEB SHERKAR
VERSUS
PANDURANG SO BABURAO WABLE**

Mr. Yuvraj S. Choudhari, Advocate for the applicant
Mr. D. R. Jaybhar, Advocate for the respondent

CORAM : KISHORE C. SANT, J.

DATE : 29th MARCH, 2023

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1. Heard the learned advocate for the parties.
2. This is a case where the complainant had deposited the cheque for an amount of Rs.40,000/- issued by the accused. However, same came to be dishonoured. The complainant therefore, filed a compliant under Section 138 of the N. I. Act in the court of learned JMFC, Parner. It is a specific case of the applicant that he was working in the school run by the institution namely Chhatrapati Pratishthan. He was given a job through acquaintance of the accused. He was not paid salary by the institution and therefore, he started pursuing persons in the Management. It is the further story that the management instead of crediting salary in his account it was paid to the

accused who took the responsibility of paying amount of salary to the complainant. It is further case that the management therefore credited the amount in the account of accused. The accused was to thereafter make payment to the complainant. However, out of Rs.50,000/-, the accused paid only Rs.10,000/- in cash and for remaining amount of Rs.40,000/- he gave a cheque to the applicant. It is this cheque which is dishonoured.

3. The learned Trial Court by considering the evidence and by considering the presumption under Section 139 convicted the accused of the offence under Section 138.

4. The accused therefore, filed an appeal in the learned Sessions Court. The learned Sessions Court holding that there was no legal liability on the accused to pay the amount to the complainant and allowed the appeal by quashing and setting aside the judgment and order passed by the learned JMFC, Parner.

5. The learned Sessions Court has also considered that the accused is not a member of the Executive body of the said management. By considering this and other evidence the court comes to conclusion that liability cannot be said to be legally enforceable and at the most said liability can be said to be a moral liability and not legal one. The court has also considered that the complainant has also filed a suit for recovery of the

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salary against the management which shows that it is the management which is liable to pay salary to the complainant. Said suit is pending.

6. This court finds that no interference is called for especially when this is an appeal against acquittal. Considering the scope of the salary this court finds that no sufficient case is made out to call for interference in the impugned order. The application therefore, is rejected.

[KISHORE C. SANT, J.]

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