

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

**80 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO.15 OF
2020**

**BADRINARAYAN S/O. ARJUNSINGH PARDESHI
VERSUS
RAMA S/O. BABURAO MOHITE**

Mr. N. K. Pardeshi, Advocate for the applicant

CORAM : KISHORE C. SANT, J.

DATE : 07th FEBRUARY, 2023

P. C.

1. Heard the learned advocate for the applicant.
2. This is an application seeking leave to file an appeal against acquittal challenging the judgment and order dated 03-01-2020 passed by the learned JMFC, Jalna in SCC No. 1846/2014 thereby acquitted the respondent from the proceeding under Section 138 of the N. I. Act.
3. Learned advocate for the applicant vehemently submits that accused has not rebutted presumption under Section 139. It is defense of the accused that cheque was given to one other person namely Vikey Seth and same has been misused by the present applicant-complainant. Though the

accused has examined himself in defense he has not examined said Vikey Seth as defense witness. Therefore, he submits that it was necessary for the accused to examine the said Vikey Seth. He submits that impugned judgment and order deserves to be quashed and set aside by holding that the accused is guilty for the offence under Section 138 of the N. I. Act.

4. In spite of service, none appears for the respondent.
5. This court thinks that the case is made out to grant leave to file an appeal against acquittal. Leave is granted as prayed for. The criminal application stand allowed.
6. Office to register the memo as appeal.

[KISHORE C. SANT, J.]

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