

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

63 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO.15 OF 2022

**SHOBHA W/O RAJU ALHAT
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Mr.S.R. Zambare, Advocate for the applicant.
Mr.P.M. Kulkarni, APP for the respondent/State.
Mr.Suvarna M. Zaware, Advocate for respondent No.2.

**CORAM : KISHORE C. SANT, J.
DATED : 09.03.2023**

PC :-

01. Heard learned Advocates for both the sides. This is an application seeking leave to file appeal against acquittal, challenging the judgment and order dated 30.12.2021 passed by the learned Additional Chief Judicial Magistrate, Ahmednagar. The respondent came to be acquitted of the charges under section 138 of the Negotiable Instruments Act. The reasons assigned by the learned Court below mainly are that the complainant failed to prove that she had capacity to give hand loan of Rs.1,50,000/- i.e. the cheque amount. Secondly that though it is accepted that three blank cheques were issued by the accused, it is held that the cheque was not written by the accused. The Court below has discussed that the salary of the complainant was Rs.19312/-; whereas the amount of Rs.1,50,000/- was given by way of hand loan. This Court finds that the amount cannot be said to be such exorbitant amount where the complainant was required to prove that she was

having that much amount or she could give that much amount towards hand loan. The learned Advocate for the applicant submits that there is also a document on record wherein the accused has executed receipt towards hand loan. However, the witness to the said receipt did not support the case of the complainant and that is also taken as circumstances against the complainant.

02. The learned Advocate for the respondent No.2 vehemently opposes the application. She states that it was necessary for the complainant to prove that she has actually given the amount of Rs.1,50,000/- towards hand loan. There is no direct evidence to prove this fact. She further submits that it has come in the evidence that when the cheque was given, it was blank cheque and thus it is clear that it is the complainant who had filled in the contents of the cheque. The learned Trial Court, therefore, has rightly acquitted the respondent.

03. This Court finds that the amount of cheque was Rs.1,50,000/- and said amount cannot be said to be such unreasonable amount which can be said that the complainant cannot have this much amount in the bank account. Though the blank cheques were given, it is admitted fact that certainly there is presumption under section 118 of the Negotiable Instruments Act that the cheque was given with implied authority to the holder in due course to fill in contents of the cheque. This Court, thus, finds that clearly a case is made out to grant leave to file appeal against acquittal.

04. The application is thus allowed.

05. The office to register the application as appeal.

[KISHORE C. SANT, J.]