

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

**90 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO.23 OF
2023**

**SANDIP ARJUN DALAVI
VERSUS
VIJAY RAMKRUSHNA WAGH**

None for the parties.

CORAM : KISHORE C. SANT, J.

DATE : 17th APRIL, 2023

P. C.

1. On 23-03-2023 the matter was argued for some time. When this court expressed that court is not inclined to allow the application, time was sought for taking instructions and the matter was adjourned to 30-03-2023. On 30-03-2023 again request was made for an adjournment and it is adjourned today by way of last chance with understanding that matter would not be adjourned on any count.

2. This is an application seeking leave to file an appeal against acquittal challenging the judgment and order passed by

the learned CJM, Ahmednagar dated 20-12-2022 in SCC No. 3327 of 2015. The learned judge by way of impugned order had dismissed the complaint under Section 138 of the N. I. Act. It is observed in para 10 of the said judgment that the complainant had received information of dishonor of cheque on 03-10-2015 as per bank return memo. However, notice was issued demanding the amount on 04-11-2015. Defense of the accused was that notice should have been issued before 02-11-2015 i.e. within 30 days. In the cross-examination therefore, this question was specifically put to the complainant. However, the complainant could not answer the same and there was no argument advanced in this regard. The learned court therefore, held that necessary pre requisite as contemplated under Section 138(b) is not complied with as the notice demanding amount was not sent within 30 days from the date of bank memo.

3. As this court had asked query to the learned advocate, therefore time was sought for taking instructions. It appears that the appellant in spite of this order could not argue

the matter. However by considering the judgment this court finds that the judgment sought to be assailed before this court is rightly passed by the learned trial court. This being an application for seeking leave to file an appeal same is required to be considered and no prima facie case is made out for taking different view than the view taken by the trial court. In such matter leave need not be granted.

4. Considering the above, this court finds that no case is made out to grant leave to file an appeal. Therefore, the application stands dismissed.

[KISHORE C. SANT, J.]

VishalK/alp23.23