

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

**927 APPLICATION FOR LEAVE TO APPEAL BY PRIVATE
PARTY NO.37 OF 2022**

Prakash Babanrao Waghmare

Age : 58 yrs, occ : retired

R/o Renuka Nagar, Kedgaon,

Talu & District Ahmednagar.

Applicant.

Versus

1. Gulab s/o Martand Gaikwad

Age : 59 yrs, occ : business

2. Atul s/o Gulab Gaikwad

Age : 45 yrs, occ : business

Both r/o Jagannathnagar,

Nagar-Pune Highway, Kedgaon,

Taluka and Dist. Ahmednagar.

Respondents

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Mr. A.G. Ambetkar, Advocate for the applicant.

Mr. M.R. Sonawane, Advocate for respondent Nos.1 and 2.

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CORAM : SANDIPKUMAR C. MORE, J.

DATED : 30th August 2023.

ORDER:-

1. Heard rival submissions.

2. The applicant-original complainant is seeking leave to file appeal for challenging the acquittal of the present respondents from the charge under Section 138 of the Negotiable Instruments Act in S.C.C. No. 2600/2017 under judgment

dated 20.12.2021 passed by the learned Additional Chief Judicial Magistrate (Court No.6), Ahmednagar (hereinafter referred to as “the learned trial Court”).

3. According to the learned Counsel for the applicant/complainant, the learned trial Court wrongly observed that there was no preivity of contract between appellant and respondents and therefore, erred in arriving at the conclusion that the disputed cheque was not issued for discharge of legally recoverable debt. He pointed out that there was compromise between the applicant and respondent No.1 in respect of payment to Sahyadri Nagari Sahakari Patsanstha Maryadit, and therefore, respondent No.1 had given cheque to the applicant-complainant.

4. On the contrary, learned Counsel for the respondents strongly opposed the submissions made on behalf of the applicant-complainant. He pointed out that though there was earlier compromise between the applicant and respondent No.1 as per Exh.61, but after dishonour of cheque mentioned therein i.e. Cheque No. 59092, no criminal complaint was filed and the applicant had also not produced memo in respect of dishonour of cheque No. 59090 which was subsequently issued by the respondents in the name of their shop.

5. However, on perusal of entire documents on record, it appears that the learned trial Court has observed that the cheque which was dishonoured was not in respect of compromise at Exh.61 and the issuance of subsequent cheque No. 59090 was not in respect of the said compromise. It is further observed that the disputed cheque dated 14.03.2017 was in fact in respect of compromise Exh.61 and it was presented to the bank belatedly i.e. after six months. However, the record shows that there were two cheques i.e. Cheque No. 59092 given as per Exh.61 which was admittedly dishonoured, but no complaint was filed and the second is Cheque No. 59090 dated 14.03.2017 which was also dishonoured and the present complaint is in respect of the same. It appears that while returning the aforesaid dishonoured cheque dated 14.03.2017, the bank had given memo of earlier dishonoured cheque i.e. Cheque No. 59092. According to the learned Counsel for the applicant, this was mistake of the bank. However, the applicant should have called the bank witness to produce the memo of dishonour of subsequent cheque bearing No. 59090. The learned Counsel for the applicant submits that the applicant shall not suffer due to the mistake of bank and one opportunity needs to be given to him to establish the true facts. Thus, considering all these facts, I am of the

opinion that the contention of the applicant needs consideration and therefore, the leave to file appeal needs to be granted. As such, I pass following order.

ORDER

- (i) The application is hereby allowed.
- (ii) The appeal of the applicant be registered after removal of office objections, if any.
- (iii) The application is disposed of.

(SANDIPKUMAR C. MORE, J.)