

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

**CRIMINAL APPLICATION FOR LEAVE TO APPEAL
BY PRIVATE PARTY NO. 95 OF 2023**

Rajaji Sonaji Budhwant Applicant

Versus

Dipak Bhausahab More Respondent

Mr. S. R. Andhale, advocate for the Applicant

**CORAM : SANDIPKUMAR C. MORE, J.
DATE : 01st NOVEMBER, 2023.**

P.C. :

1 Heard learned Counsel for the applicant.
Respondent, despite service, remained absent.

2 On going through the impugned judgment, it appears that the learned Trial Court has acquitted the respondent-accused mainly on the ground that the complainant could not prove the fact of dishonour of cheque in dispute. Admittedly, the memo issued by Yes Bank is produced on record by the complainant mentioning that the cheque issued by the respondent-accused got dishonoured due to "funds insufficient". However, it appears that the said

return memo was not shown to the bank officer while examining him. However, in the statutory notice at Exhibit-27 itself, the fact of dishonour of cheque in dispute was communicated to the respondent-accused, but he did not reply the same. Moreover, in the statement under Section 313 of the Code of Criminal Procedure also, the Respondent-accused has admitted that he had received such notice. Further, the entire Chief-examination wherein there is mention of dishonour of cheque, remained unchallenged since the respondent-accused or anybody on his behalf did not cross examine the complainant. Therefore, considering all these aspects, the applicant has made out an arguable case which requires further consideration.

3 In view of the same, Criminal Application stands allowed and the appeal of the complainant be registered after removal of office objections, if any.

SANDIPKUMAR C. MORE
JUDGE

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