

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

APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO.139 OF 2019

BABASAHEB LAXMAN KADAM
VERSUS
SHARAD RAMESH SHINDE

...
Advocate for Applicant : Mr. P. A. Bhosle h/f Mr. A. B.
Chalak

...
CORAM : R.M. JOSHI, J

DATE : AUGUST 17, 2023

PER COURT :

1. This application is filed for leave to appeal against order of acquittal dated 31.05.2019 passed by JMFC, Kaij in S.C.C. No. 511/2016 for the offence punishable under Sections 138 of the Negotiable Instruments Act, 1882.

2. Learned Counsel for the Applicant / original complainant submits that learned trial Court after discarding the defence of the accused that the cheque in question was misused by the complainant has proceeded to hold that the complainant has failed to prove that he had capacity to lend sum of Rs. 3,00,000/- in cash to the accused. In this regard, reference is made to the observation of the learned

trial Court to the effect that complainant examine Mr. Ramhari Kokate in whose presence an amount of Rs. 3,00,000/- was lent by the complainant to the accused. While discarding the case of the complainant it is observed that the complainant had admitted that he has no other source of income than the agriculture and pan shop business. There is evidence on record to show that apart from pan shop complainant earning income from agriculture. In the light of this fact, learned trial Court has failed to take into consideration the evidence of the witness who has deposed lending of cash of Rs. 3,00,000/- by the complainant to the accused. Thus, there is substance in the contention of the Counsel for the Applicant that he has arguable case to make out. Hence, application stands allowed. Appeal against acquittal be registered.

(R.M. JOSHI, J.)

Malani