

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

72 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO.89 OF 2022

**SHRINIVAS AAVDIRAM RASNE
VERSUS
SAGAR AAPPASAHEB DIVATE**

Mr.S.Y. Mahajan, Advocate for the appellant.
Mr.S.G. Sonawane, Advocate for sole respondent.

**CORAM : KISHORE C. SANT, J.
DATED : 11.04.2023**

PC :-

01. This is an application for leave to file appeal against acquittal by a private party. The acquittal is recorded by the learned Additional Chief Judicial Magistrate, Court No.9, Ahmednagar, by which the respondent came to be acquitted of the offence punishable under section 138 of the Negotiable Instruments Act.

02. The case of the applicant was that the respondent was working for Mahindra Tractor Limited as a Sales Officer. While doing the job of Sales Officer, he was engaged in the practice of purchasing tractors from owners, who have committed default in repayment of loan amount and these tractors are seized by the company for such default. He used to purchase said tractors

at lesser amount and used to sell the same for higher amount. For that he was requiring some amount. On that count the complainant paid Rs.5 lakhs to him. It was decided to distribute the profit between the complainant and the accused. So, an amount of Rs.5 lakhs was paid towards bribe. While doing said transaction, the accused has even deposited Rs.60,000/- with the complainant towards profit. However, later-on, he did not make any payment. However, he gave a cheque of Rs. 5 lakhs, which came to be dishonoured. After completing the formalities, the complaint was filed under section 138 of the Negotiable Instruments Act. It is case of the complainant/applicant that though all the facts are proved and though there is no dispute about issuance of cheque and the signature on the cheque by the accused, still he is acquitted by the Trial Court.

03. The Trial Court has considered that the activities of purchase and sale of the tractors was not legal one and it was causing loss to the dealer of the tractor and therefore it was held that the object was not lawful as per section 23 of the Indian Contract Act. It is submission of the applicant that it is not defence of the accused that he was indulged into illegal practices and practically there is no defence of the accused and still the Trial Court on its

own has considered section 23 of the Indian Contract Act. He submits that it was not open for the Court to consider this aspect when it is not case of any of the parties.

04. Looking to the case, this Court had called the record and proceedings. After perusal of the record and proceedings, this Court finds that case is made out to grant leave. Hence, following order :-

ORDER

- i) The application for leave to appeal is allowed.
- ii) Office to register the application for leave to appeal as criminal appeal.
- iii) Place the criminal appeal for consideration on 20.06.2023.

[KISHORE C. SANT, J.]