

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

980 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO.176 OF 2019

SHYAM S/O. MANIKRAO SHIRASKAR
VERSUS
HARI S/O. MUNJAJI DAKORE

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Advocate for Applicant : Mr. Pravin N. Kalani

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CORAM : R. M. JOSHI, J.
DATE : AUGUST 1, 2023

PER COURT :

- . Heard learned counsel for the applicant.
2. None for respondent - original accused. In spite of granting sufficient opportunities, no one has appeared on his behalf.
3. Learned counsel for the applicant submits that learned Trial Court has acquitted accused on the ground that admitted signature of the accused and the signature on cheque differs. It is further submitted that while arriving at the said finding, there is no other evidence led by the accused, however on the basis of comparison of the signatures, such finding is recorded. It is submitted that the cheque in question was returned dishnoured for the reason of funds insufficient and not on the ground that signature differs. Pertinently, the accused has not even entered the witness box in order

to deny his own signature. According to him, in such circumstances there was no reason or occasion for the learned Trial Court to compare the signatures of the accused and to record finding. According to him, only on this ground the acquittal has been recorded.

4. Prima facie perusal of notes of evidence and the judgment impugned show that the acquittal has been recorded essentially on the ground that signature of accused differs from admitted document and cheque in question. It is trite that in exercise of Section 73 of the Evidence Act Court should be extremely slow. Particularly, in view of admitted fact on record that there was memo issued by Bank not for difference in signature but for insufficient funds. The accused has not even entered in witness box and denied his signature on cheque. Considering presumption attached to negotiable instrument under Section 118 and 139 of Negotiable Instruments Act, question arises as to whether the accused has successfully rebutted the same. Hence arguable case is made out by applicant. Hence application is allowed. Appeal be registered.

[R. M. JOSHI]
JUDGE

GGP