

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PRIVATE PARTY
NO. 125 OF 2022

1. Bapu Yashwant Shinde (died)
Through his legal representatives,

1(1) Kusum Bapu Shinde,
Age : 70 years, Occu. : Agriculture,

1(2) Satish Bapu Shinde,
Age : 44 years, Occ. : Service,

Both R/o. : 7/B – Balaji Colony,
Kedgaon, Tq. and Dist. Ahmednagar

... Applicants
(Ori. Complainants)

VERSUS

Malhari Baban Bhor,
Age : 52 years, Occ. : Business,
R/o. : Bhorwadi, Tq. and Dist. Ahmednagar

... Respondent
(Ori. Accused)

...

Mr. Krushna Bhosale h/f. Mr. Ajay T. Kanawade – Advocate for Applicants

Ms. Pratiksha C. Kale – Advocate for Respondent

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CORAM : SANDIPKUMAR C. MORE, J.

DATE : 17th October, 2023

ORDER :

1. The applicants who are the legal representatives of complainant – Babu Yashwant Shinde are seeking leave to file appeal against the judgment and order dated 11th October, 2022 passed by the learned Additional Sessions Judge – 3, Ahmednagar

(hereinafter referred to as “*learned Sessions Judge, Ahmednagar*”) in Criminal Appeal No. 54 of 2018 arising out of judgment and order dated 3rd February, 2018 passed by the learned Judicial Magistrate First Class (Court No.7), Ahmednagar (hereinafter referred to as “*learned J.M.F.C., Ahmednagar*) in S.C.C. No. 2677 of 2015 for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as “*the N.I. Act*”). Admittedly, the respondent – accused was earlier convicted by the learned J.M.F.C., Ahmednagar as mentioned above but in the appeal learned Sessions Judge, Ahmednagar had acquitted him.

2. Learned Counsel for the applicants submits that, though the learned J.M.F.C., Ahmednagar had convicted the present respondent – accused by holding that, the cheques in dispute were issued by the respondent out of legally enforceable liability, but the learned Sessions Judge, Ahmednagar wrongly acquitted the respondent by giving contrary finding that, “there was no liability of the accused towards the original complainant”. He pointed out that, the learned Sessions Judge, Ahmednagar wrongly considered the transaction of year – 2011 regarding amount of Rs.50,000/- for

acquitting the respondent. He pointed out that, there were two transactions, first of the year – 2012 for amount of Rs. 50,000/- and the second one is of the year – 2014 for the amount of Rs.80,000/- for which present cheques were given for expansion of business of accused.

3. On the contrary, learned Counsel for respondent – accused strongly opposed the submissions made on behalf of the applicants. According to her the original complainant had given vital admissions on the basis of which it was revealed that, the disputed cheques were given as security against the construction work of the daughter-in-law of the complainant. There was no transaction of handloan between the complainant and accused.

4. Heard rival submissions. Also perused the documents on record and the copies of deposition.

5. It is significant to note that, initially the respondent – accused was convicted the respondent on the basis of evidence of record. However, thereafter the learned Sessions Court, Ahmednagar on the basis of same evidence acquitted the respondent – accused. Though the rival Counsel appearing for the

parties strongly made submissions against each other as to how the cheques were issued in connection with the legally enforceable liability and vice-versa, but when there are two contrary findings based on the same evidence, I am of the opinion that it can be revisited independently by way of appeal irrespective of the findings recorded by both the Courts below. As such, the application stands allowed in terms of prayer clause – C and leave as prayed by the applicants is granted to challenge the acquittal of respondent in Criminal appeal No.54 of 2018. Prayer clause – C of the application reads as under :

“[C] This Hon’ble Court may be pleased to grant leave to the applicant to file an appeal against acquittal in Judgment and Order in Criminal Appeal No. 54/2018 passed by Additional Sessions Judge, Ahmednagar, dated 11/10/2022, whereby the learned Sessions Judge acquitted the respondent/accused of the offence punishable under Section 138 of the Negotiable Instruments Act.”

6. The appeal of the applicants be registered after removal of office objections, if any.
7. The application accordingly disposed of.

**[SANDIPKUMAR C. MORE]
JUDGE**