

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPA) NO.25 OF 2023

IN

CRIMINAL APPLICATION STAMP NO.170 OF 2023

Dipesh s/o Dilipbhai Kanabar

Vs.

Sangeeta Krishnarao Mahalle

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Bobby Thomas, Advocate for applicant.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 24/07/2023

1. The present application is for leave to file appeal against the judgment and order of acquittal passed in Summary Criminal Case No.4986/2017 by which the accused is acquitted of the offence punishable under Section 138 of the Negotiable Instruments Act.

2. Heard learned Counsel for the applicant. He submitted that the learned trial Court has not considered that there were legally enforceable debts and the cheque was issued against the said legally enforceable debt. The appellant has adduced the evidence however, the learned trial Court on the basis of statement of the accused, under 313 of the Code of Criminal Procedure holds that the accused has rebutted the presumption and acquitted the accused. Thus, the observations of the learned trial

Court that in the statement under Section 313 of the Code of Criminal Procedure, the accused has rebutted the presumption is erroneous.

3. I have gone through the impugned Judgment. The learned trial Court has considered the evidence and held that the accused has rebutted the presumption. The appellant has made out the arguable points will show that the appellant has every chance of success in the appeal. Considering the same, leave is to be granted to file an appeal.

4. In view of that, application for leave is granted.

5. Call for record and proceedings.

6. The appeal be placed before the Court after receipt of the record and proceedings.

7. The appellant shall file private paper book within six weeks.

(URMILA JOSHI-PHALKE, J.)

Sarkate