



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

**APPLICATION FOR LEAVE TO APPEAL BY PRIVATE PARTY
NO.53 OF 2024**

MOHAMMED YUSUF KHAN S/O. MOHD. MAHEMUD KHAN

VERSUS

MIR IRSHAD ALI S/O. MAHEMUD ALI

...

Mr. Tarek Mobin H. Shaikh , Advocate for Appellant

Mr. Ahmedulla Mohammad Waweemulla, Advocate for Respondent

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 02nd JULY, 2024

PER COURT :

1. By this application filed under Section 378(4) of the Code of Criminal Procedure, applicant seeks leave to file criminal appeal against order of acquittal dated 16/12/2023, passed by learned 5th Judicial Magistrate First Class, Beed, in S.C.C. No.513/2019, thereby dismissing complaint filed by applicant/complainant under Section 138 of the Negotiable Instruments Act, for want of prosecution.

2. Applicant filed complaint against respondent for dishonour of cheque of Rs.14,00,000/-, on 23/04/2019. Thereafter the matter was adjourned from time to time for appearance of respondent. Roznama dated 15/11/2022 shows that summons was served on respondent, however, he remained absent. The matter was then adjourned to 26/12/2022. Roznama dated 26/12/2022 shows that complainant was absent but his lawyer was present and

the matter was adjourned for compliance. On 17/01/2023 complainant and his lawyer both were absent and the matter was adjourned for compliance to 20/02/2023. On 20/02/2023 also complainant and his lawyer were absent and the matter was adjourned for compliance to 04/04/2023. As public holiday was declared on 04/04/2023, matter was adjourned to 17/06/2023. On that date, complainant was absent but his lawyer was present and the matter was adjourned for compliance to 26/07/2023. On that date also complainant was absent and his lawyer was present and matter was adjourned for compliance to 23/08/2023. On that date, complainant and his lawyer both were absent. The matter was then adjourned to 09/11/2023 and on that date complainant was absent and hence, the matter was kept for dismissal. Ultimately on 16/12/2023 since complainant and his lawyer both were absent in spite of repeated calling, complaint was dismissed. The proceeding was stopped under Section 256 of Cr.P.C. and respondent / accused was acquitted. Hence, this Application for Leave to Appeal.

3. Heard learned advocate for applicant / complainant and learned advocate for respondent/accused. Perused the documents placed on record.

4. It is a matter of record that respondent / accused did not cause his appearance though summons was served on him. Learned advocate for accused submits that major part of the

cheque amount was already paid by accused to complainant /applicant and that is why complainant was not taking effective steps. There is no merit in the said submission in as much as though summons was served on respondent / accused, he has not caused his appearance in the matter.

5. On most of the dates either complainant or his lawyer seems to be present. The cheque is of Rs.14,00,000/- and fair opportunity needs to be given to complainant to prosecute his case. In that view of the matter, I am inclined to allow the application.

6. In the result, following order:-

O R D E R

- (I) Application is allowed.
- (II) Applicant is granted leave to file appeal challenging order dated 16/12/2023, passed by learned 5th Judicial Magistrate First Class, Beed, in S.C.C. No.513/2019.
- (III) Appeal be registered.
- (IV) List the Appeal for further consideration in the next week.

(NITIN B. SURYAWANSHI, J.)