



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

**APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY
NO. 121 OF 2023**

Sadanand Narayan Nihave
Age: 46 years, Occu.: Business,
R/o.Labour Colony,
Tq. and Dist.Aurangabad.

..Applicant
(Orig. Complainant)

Versus

Anil Ramchandra Walvekar
Age: 49 years, Occu.: Business,
R/o. Building no.32, Room No.284,
Eknath Nagar Road,
Near Ganpati Temple, Aurangabad.

..Respondent
(Orig. Accused)

...

Advocate for Applicant : Mr. Gautam J. Pahilwan

Advocate for Respondent : Mr.Chaitanya Deshpande h/f. Mr. Govind
M. Sharma

...

CORAM : ABHAY S. WAGHWASE, J.

DATE : 01 MARCH, 2024

PER COURT :-

1. Above application for leave is an off-shoot of order passed by the learned 10th Additional Chief Judicial Magistrate, Aurangabad on 20-07-2023 in SCC No.1392 of 2019 thereby acquitting present respondent from offence under Section 138 of the Negotiable Instruments Act (NI Act).
2. Learned Counsel for the applicant submitted that SCC No.1392

of 2019 was filed because of dishonour of cheque issued by the respondent. After completing all formalities and verification, learned trial Court has also issued process. However, by order dated 20-07-2023 complaint has been dismissed and respondent is acquitted. It is pointed out that infact the learned trial Court has not considered Roznama and previous order passed on exhibit 20 dated 13-09-2022, and in hurried manner matter is disposed of, thereby causing injustice to the complainant and hence, he prays to grant relief to question the said impugned judgment and order dated 20-07-2023.

3. Learned Counsel for the respondent strongly opposed by pointing out that summary criminal case was instituted in 2019. That repeatedly complainant failed to appear and contest his proceedings. That even otherwise, necessary ingredients for constituting offence under Section 138 of the NI Act were not available and therefore, learned trial Court has committed no error in acquitting accused.

4. After hearing submissions of both the sides, it seems that proceedings under Section 138 of the NI Act was instituted by present applicant contending that he is in clothe business and out of friendly relation, he extended hand-loan to accused respondent and

towards its repayment, cheque was issued by respondent, but it was dishonoured and therefore, after issuing notice, proceedings under Section 138 of the NI Act was instituted.

5. It seems that the learned trial Court on 25-01-2019 perused complaint, its contents and on getting convinced, directed to issue process against accused. However, by order dated 20-07-2023, learned 10th Additional Chief Judicial Magistrate, dismissed the complaint holding that complainant as well as his Advocate are remaining absent for last six dates and thereby acquitted accused.

Therefore, apparently complaint has been dismissed for want of prosecution. In the interest of justice as a fair chance, application for leave to file appeal is required to be allowed. Accordingly, following order is passed :

ORDER

- I. The application stands allowed in terms of prayer clause "A".
- II. Leave is granted to file Appeal.
- III. Registry to verify and register the Appeal.
- IV. List the appeal for further consideration on 15-03-2024.

(ABHAY S. WAGHWASE)
JUDGE