



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

**APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO.
263 OF 2018**

Eknath S/o. Sonaji Pathade
Age: 69 Years, Occu.: Retired,
R/o. Malives, Beed, Tq. And Dist.Beed.Applicant

Versus

Gopichand S/o. Ramrao Shingote
Age: 55 years, Occu.: Service,
r/o. Maharashtra State Electricity Transmissions Co.
Ltd., 132KV Sub-Station, Harsul, Aurangabad,
Tq. and Dist.Aurangabad.
Second address : C/o. Executive Engineer,
Maharashtra State Electricity Transmissions Co.
Ltd., Main Store, Nashik Road, Pedgaon,
Aurangabad, Tq. and Dist.Aurangabad.Respondent
(Original Accused)

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Advocate for Applicant : Mr. Hrishikesh V. Tungar
Respondent sole Served.

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 27 FEBRUARY, 2024

PRONOUNCED ON : 29 FEBRUARY, 2024

ORDER :

1. Aggrieved by the judgment and order passed by learned Judicial Magistrate First Class (Court No.3), Beed in SCC No.446 of 2013 acquitting present respondent from offence under Section 138

of the Negotiable Instruments Act (NI Act), original complainant is seeking leave to question the same by filing appeal.

2. Learned Counsel for the applicant submitted that out of friendly relations, hand-loan was extended to accused. There was documentary evidence regarding such transaction. Towards repayment, cheque was issued, but was dishonoured. Therefore, proceedings under the NI Act was initiated.

3. It is further submitted that false defence has been taken by accused that too regarding borrowing only Rs.20,000/- in the year 2006 and not Rs.1,00,000/-. However, it is pointed out that acceptance of hand-loan has not been denied, but the learned trial Court did not appreciate evidence properly and findings given in paragraph 18 of the impugned judgment is apparently erroneous. That infact accused had admitted documents of transaction but even such fact has not been considered by the learned trial Court. Therefore, lastly he submitted that there is a good case on merits in appeal and hence, he seeks leave to file appeal.

4. Record shows that this matter was on the board on 30-01-2024

and submissions of learned Counsel for applicant were heard. None was present for the accused respondent at that time inspite of matter being kept back and therefore, when twice in the morning session, none appeared for respondent, matter was kept back in the afternoon session, but none was present and therefore, by way of last chance for submissions of respondent accused, matter was adjourned to 27-02-2024.

5. Today also when the matter was called out twice in the morning session as well as in the afternoon session, none was appeared for respondent accused to answer present application.

6. Consequently, on going through the record, apparently it appears that there is mere dispute of quantum but not of borrowing loan. Statement is made across the bar by learned Counsel for applicant that there is document of transaction but the same has not been appreciated by the learned trial Court. Therefore, considering the same, application for leave to file appeal deserves to be allowed. Accordingly, I proceed to pass following order :

ORDER

- I. The application stands allowed.
- II. Leave is granted to file Appeal.
- III. Registry to verify and register the Appeal.
- IV. Appeal stands **admitted**.
- V. Call record and proceedings.

(**ABHAY S. WAGHWASE**)
JUDGE