



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

CRIMINAL APPLICATION (APPA) NO.68 OF 2024
IN
CRIMINAL APPEAL STAMP NO.555 OF 2024

(Dinesh s/o Dnyandeo Hiralkar Vs. Shamrao s/o Dagduji Hivrale)

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

Court's or Judge's orders.

Mr. Ram Karode, Advocate for Appellant/Applicant.

CORAM: URMILA JOSHI PHALKE, J.

DATE: 16th APRIL, 2024.

By preferring this appeal the appellant/applicant has challenged the order of acquittal passed by the Judicial Magistrate First Class, Patur, District Akola dated 28.11.2023 by which the accused is acquitted under Section 255(1) of the Code of Criminal Procedure and the offence punishable under Section 138 of the Negotiable Instruments Act.

2. The learned counsel for the appellant/applicant submitted that the judgment of the acquittal is completely erroneous without considering the undertaking given by the accused before the trial court accepting the liability to pay the amount. The learned trial court has completely ignored this fact and erroneously held that there was no legal and enforceable debt. It is further erroneously observed by the trial court that the accused has made out a probable defence of misuse of cheque given as a security and

acquitted the accused. Thus, the appellant/applicant has made out the arguable points in the present appeal. In view of that, leave be granted to prefer an appeal.

3. Having heard the learned counsel and on perusal of the impugned judgment as well as undertaking given by the accused before the trial court, it reveals that the trial court has not considered the same. By way of undertaking the appellant/applicant has accepted the liability to pay the amount which is in dispute as the cheque issued by the accused is dishonoured. But it appears that the learned trial court has observed that the defence of the accused is probable defence regarding misuse of cheque which was given as a security, the said fact is contrary to the material on record.

4. Though respondent is served, none appeared for the respondent.

5. Considering the arguable points made out, leave is granted. Criminal Application (APPA) No.68/2024 is disposed of.

CRIMINAL APPEAL STAMP NO.555/2024:

Heard.

2. **Admit.**

3. Call for record and proceedings.
4. Appeal be placed before the Court after preparation of the paper-book.

JUDGE

NSN