



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

CRIMINAL APPLICATION NO.143 OF 2024

IN

CRIMINAL APPEAL NO.71 OF 2024

(M/s. Worth Capital Finance Pvt. Ltd. Vs. Shri Prashant Laxmanrao Borkute)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Ms PS. Agrawal, Advocate for the appellant.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- DECEMBER 2, 2024.

By preferring this application, the appellant is seeking leave to prefer an appeal.

2. Learned Counsel for the appellant submitted that the appellant is the original complainant who filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 contending that out of the business transaction the amount is due from the accused and in discharge of the legal and enforceable debt he has issued the cheque bearing No.174595 dated 16/02/2017 of Rs.1,50,000/- drawn on Bank of Maharashtra, Nagpur. The said cheque was deposited by the complainant in his account but the said cheque was dishonoured and returned with an endorsement "Funds Insufficient", therefore, complainant issued the notice. After receipt of the notice also the accused has not paid the amount, and therefore, complainant constrained to file the complaint.

3. In support of the contention, complainant examined himself as well as he adduced the evidence and also relied upon the documentary evidence. The defence of the accused is that the cheque was issued as a security. The complainant has though proved that there was legal and enforceable debt and cheque is issued in discharge of legal and enforceable debt though accused has not discharged the burden or not rebutted the presumption. Learned trial Court has acquitted the accused only by holding that no statement of account is placed on record in support of the said amount. Exhibit 32 shows liability of Rs.1,54,704/- and Exhibit 47 shows liability of Rs.2,14,369/-. Learned Counsel for the complainant submitted that Exhibit 47 be sent and by considering all these aspects acquitted the accused.

4. Learned Counsel for the appellant submitted that the accused has not at all rebutted the presumption. She submitted that the appellant has many arguable points and every chance of success in the present appeal. In view of that, leave be granted.

5. None present for the respondent. Perused the complaint as well as impugned judgment from which it reveals that merely because the complainant has not placed on record the account statement, the accused is acquitted by the 2nd Additional Chief Judicial Magistrate.

As far as the rebuttal of the presumption is concerned the judgment nowhere states that in what manner the presumption is rebutted by the accused.

6. Learned Counsel for the appellant has rightly pointed out from the impugned judgment that she has many arguable points. In view of that, she has made out a case for grant of leave. In view of that, the application deserves to be allowed.

7. The application is allowed.

8. Leave is granted.

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9. Call for R. and P.

10. Appeal can be disposed of at the stage of admission itself.

11. Appeal be listed after receipt of the R. and P.

(URMILA JOSHI-PHALKE, J.)