



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO. 01 OF 2025

Kedarnath Ramnaji Budhwat,
Age : 64 years, Occ : Retired,
R/o: Shri Sadan, Shrikrishna Nagar,
New Mondha Road, Tq. & Dist. Jalna.

... Applicant
[Orig. Complainant]

Versus

Bhimrao Karbhari Kayande,
Age : 51 yrs, Occ : Service,
R/o : Shri. Shivaji Highschool,
Tq. & Dist. Buldhana.

... Respondent
[Orig. Accused]

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Mr. B. S. Dhawale, Advocate for the Applicant.
Mr. R. B. Gite, Advocate for the Respondent.
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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 04.11.2025

Pronounced on : 07.11.2025

ORDER :

1. Instant application for leave to file appeal is on behalf of the original complainant, who intends to question the judgment and order of acquittal dated 06.12.2024 passed by the Additional Chief Judicial Magistrate, Jalna in SCC No. 1202 of 2018, acquitting present respondent from the offence under Section 138 of the Negotiable Instruments Act, 1881 [for short, "the Act"].

2. Learned counsel for the applicant would point out that, above proceedings under Section 138 of the Act were instituted against the present respondent as, out of long acquaintance, an amount of Rs.10,00,000/- (Rupees Ten Lakh only) by way of hand loan was extended. That, towards re-payment of the same, cheque was issued. However, the cheque got dis-honoured and therefore the proceedings under Section 138 of the Act were instituted. Learned counsel submitted that, the trial court primarily acquitted the accused on the ground that there was no written contract. That, neither issuance of cheque, nor signature over it was disputed. However, according to learned counsel, the manner and tenor of cross of the complainant at the instance of the accused itself shows that there was no dispute about borrowing hand loan at various times. Secondly, the defence put forth by accused was not probalilized. Learned counsel pointed out that, accused has set up a case of mere denial and misuse of cheques, regarding which there was no demonstrable evidence on behalf of the accused. Thus, according to the learned counsel, there is good case on merits, and judgment being erroneous, complainant intends to prefer appeal. Learned counsel therefore urges for grant of leave.

3. Strongly opposing the above application, learned counsel for the respondent points out that complainant had failed to discharge his primary burden of proving existence of legally enforceable debt. Secondly, cheque issued as a security in another transaction of loan was misused by the accused. Even complainant had not placed on record anything to show that there was extension of any hand loan. Learned counsel pointed out that, it is the very case of the complainant that amounts were given at various times and that too, in installments, but complaint is devoid of precise details of the same and therefore, when there was nothing concrete about extension of any hand loan as alleged, it is his submission that, the trial court committed no error whatsoever in acquitting the accused. Resultantly, he prays to refuse leave.

4. Heard. Perused the papers. It seems that present applicant Kedarnath instituted SCC No. 1202 of 2018 on the premise that, he knows accused since last 20 years. Accused was working as a peon in a highschool. It is also his case that during their acquaintance, on various occasions, accused had borrowed loans and even re-paid the same. It is further averred in the complaint that in June 2017, accused borrowed Rs.10,00,000/- on two counts, i.e. medical treatment of father and secondly, for re-payment of tractor loan. In paragraphs 3

to 5 of the impugned judgment, it has been observed that Rs.10,00,000/- were given, but as pointed out by learned counsel for the respondent, and it being already clearly averred in the complaint that, time to time and in installments amount was paid, but details are not furnished as to when and on which date, what particular amount was extended. Mere general statement is made that time to time Rs.10,00,000/- were given by way of hand loan. As pointed out by learned counsel for the respondent, and as held by the learned trial court, there is nothing in black and white regarding borrowing of Rs.10,00,000/- and extension of hand loan of Rs.10,00,000/-. It is fairly settled legal position that, in proceedings under Section 138 of the Act, it is expected of the complainant to demonstrate and lead cogent evidence showing that there was extension of financial assistance and there was existing a legally enforceable debt. However, *prima facie*, it is emerging that alleged transaction is of June 2017 and directly demand is shown to be made in April 2018. Therefore, complainant's case is not convincing or full-proof.

5. In cases under Section 138 of the Act, primary burden is on the complainant to prove that there was legally enforceable debt. Here, complainant having failed to demonstrate that there was extension of hand loan, there is no question of drawing presumption and calling

upon accused to rebut the same. Even otherwise, accused has put up a defence that cheque in question was in fact issued as a security in a loan proposal and the same was misused by the applicant. In paragraph 16 of the order sought to be challenged, learned trial court has discussed this aspect by referring to the say of accused under Section 313 Cr.P.C.. It is fairly settled position that accused need not prove his case by leading cogent and reliable evidence. It is merely expected to probabalize his defence. The defence so taken by accused does not seem to have been refuted by the complainant. For above reasons, there does not seem to be a case made out for leave to be granted so as to permit applicant to prefer appeal. There being no merit in the application, following order is passed :

ORDER

- I. Leave to file appeal is refused.
- II. Application is dismissed.

[ABHAY S. WAGHWASE, J.]

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