IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO.10 OF 2025

Rupesh Kishan Kove,
Age: 36 years, Occupation : Service,
Resident of – Mahur Tq. Mahur,
Dist – Nanded. ….Applicant
[Original Complainant]

VERSUS

Gajanan Uattamrao Zunjare,
Age: 38 years, Occupation : Service,
Resident of – Want No.13, Mathura Nagar, Mahur,
Tq. Mahur, Dist. Nanded,
Working at – Shri. Renukadevi Art,
Commerce and Science College, Mahur,
Tq. Mahur, Dist. Nanded. …..Respondent
[Original Accused]

Appearance

Mr. Rohit N. Patil h/f Mr. Sandip R. Sapkal, Advocates for the Applicant

Mr. Prashant K. Nikam and Ms. Meenal D. Jadhav, Advocates for the Respondent

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CORAM : NEERAJ P. DHOTE, J.

DATE : 8th May, 2025

FINAL ORDER :

1. The following prayers are made in this Application :-

> “A) That this Hon’ble court may be pleased to grant special leave to appeal to the applicant from the judgment and order of acquittal dated 09.12.2024 passed by the learned Judicial Magistrate First Class, Mahur, Dist. Nanded in Summary Criminal Case No.149 of 2022.

B) That the Record and Proceedings of SCC No. 149 of 2022 from the Court of learned Judicial Magistrate First Class, Mahur Dist. Nanded may kindly be called for.

C) That the impugned judgment and order of acquittal dated 09.12.2024 passed by the learned Judicial Magistrate First Class, Mahut Dist. Nanded may pleased be quashed and set aside and the respondent be convicted for having committed an offence under section 138 of the Negotiable Instrument Act, 1981.

D) Any other relief for which the applicant is entitled for may kindly be granted in the interest of justice."

2. It is submitted by the learned Advocate for the Applicant – Original Complainant that, the Applicant had preferred a Complaint before the learned Magistrate against the Respondent – Original Accused, for an offence punishable under Section 138 of the Negotiable Instrument Act, 1881 [hereinafter referred to as the 'N. I. Act']. The Complainant was in the services of Shri. Renukadevi College, Mahur, District – Nanded, as the Sevak and the Respondent was working as a Lecturer in the said College. Due to their acquaintance with each other, many financial transactions took place between them by way of hand loan. In March – 2022, the Respondent was in need of money for construction of his house and so, he demanded Rs.10,00,000/- from the Complainant and accordingly, on 20th March, 2022, the Complainant gave Rs.10,00,000/- in cash to the Respondent at his house [Complainant's house]. The Respondent promised to return the said amount by August – 2022. The Respondent returned Rs.1,50,000/- in installments from time to time, as the

Complainant was also in need of money for construction of his house. He demanded back the remaining amount of Rs.8,50,000/- from the Respondent. The Respondent issued a cheque of Rs.8,50,000/- dated 5th September, 2022 in the name of Complainant, drawn on his account with the Maharashtra Rural Bank, Mahur Branch, District Nanded and informed the Complainant that, as there were no money in his bank account, the cheque be deposited after the date mentioned on the cheque.

3. When the Complainant deposited the cheque in his account on 5th September, 2022, it was dishonoured for the reasons '*Payment Stopped by the drawer*'. The Complainant sent a legal notice to the Respondent through an Advocate on 3rd October, 2022 and demanded the remaining amount within fifteen [15] days. The notice was returned unserved with an endorsement as 'unclaimed'. As the Respondent failed to repay the amount, the Complainant filed the above referred Complaint before the learned Magistrate. The Complaint was tried. Both the parties led their evidence. Thereafter, the learned Magistrate passed the impugned Judgment and Order, acquitting the Respondent for the offence punishable under Section 138 of the N. I. Act.

4. It is submitted by the learned Advocate for the Complainant that, despite the evidence on record, the learned Trial

Court acquitted the Respondent. It is submitted by the learned Advocate for the Respondent that, no interference is called for in the impugned Judgment and order. Both the sides referred the evidence relied by the parties before the learned Magistrate and the observations in the impugned Judgment.

5. The Complainant had filed his Evidence Affidavit on the lines of his Complaint. It has come in the cross-examination of the Complainant that, he had obtained a loan form Jankalyan Credit Co-operative Society and its re-payment was in progress. In December – 2021 or January – 2022, he took loan from the Mahur Banch of the Bank of India for construction of his house. In the year – 2021, the construction of his house was in progress. He admitted that, in the year – 2021 to 2022, he was not in a position to lend financial help to other, since the construction of his house was going on. According to him, Rs.10,00,000/- was a big amount. He did not remove the said amount from the Bank. The said amount was given by him out of his salary and income from the joint family. He had no document to show that, he had given Rs.10,00,000/- to the Respondent and he did not felt it necessary to lend the said amount in presence of any witness. He was not the Income Tax payee. He had no documentary evidence to show that, the Respondent was to pay him the amount by August – 2022. He admitted that, he used the Scooty [Two Wheeler] of the Respondent for his use whenever required. He showed ignorance that, the cheque

of Respondent was missing at the time of purchasing the Scooty and, therefore, the Respondent had given intimation to stop the payment. Suggestions are given that, the missing cheque was misused and the Respondent was never residing on the address given in the notice and in conveyance with the staff of the Postal Department, the endorsement was made on the notice.

6. The Respondent entered the witness box and he denied the case of Complainant of hand loan of Rs.10,00,000/-, denied issuing any cheque to the Complainant and the liability. He accepted in his cross-examination that, he did not lodge Report for loss of his cheque.

7. On appreciating the evidence available on record that, the learned Magistrate observed that, the Respondent was able to rebut the presumption under the N. I. Act, on the basis of following aspects :

[a] The Complainant was working on the post of Sevak and taking into consideration his monthly salary, it was doubtful that, he gave Rs.10,00,000/- as hand loan to the Respondent.

[b] At the time of disputed transactions, there was loan of Credit Co-operative Society and Bank on the Complainant. It was not probable that, any person having loan would lend Rs.10,00,000/- without any interest to other person as the hand loan.

[c] There is no evidence that, the Complainant had other source of income, and therefore, the version of Complainant that, he lent Rs.10,00,000/- in cash to the Respondent without withdrawing any amount from his Bank when he was working as Sevak.

[d] The Complainant was not aware as to for what purpose the Respondent had taken the said amount and, therefore, there were no close relations between the Complainant and Respondent so as to give hefty amount of Rs.10,00,000/- in cash.

[e] In 2021, the Respondent had taken housing loan and he was working as the Lecturer and, therefore, the defence that, there was no need to take money from the Complainant, was probable.

8. The learned Magistrate recorded its satisfaction that, the Respondent was successful in rebutting the presumption under the N. I. Act and the Complainant could not establish his case that, the cheque was issued by the Respondent towards payment of legally enforceable debt. The conclusion arrived by the learned Magistrate is based on the evidence available on record. On reassessing the evidence available on record, the said conclusion recorded by the learned Magistrate cannot be faulted. Hence, the acquittal of the Respondent needs no interference and hence, the Application is dismissed.

[NEERAJ P. DHOTE, J.]

Sameer/-