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

APPLICATION FOR LEAVE TO FILE APPEAL BY PRIVATE PARTY NO.75 OF 2018

Prakash S/o. Amolakchand Bardiaya,
Age: 62 years, Occu.: Business,
R/o. Jamner, Tq. Jamner,
Dist. Jalgaon

... Applicant
(Orig. Complainant)

Versus

Sunil S/o. Gajanan Joshi,
Age: 45 years, Occu. Agri & Business,
R/o. Mundkheda, Post Garkheda,
Tq. Jamner, Dist. Jalgaon
At Present R/o. Sona Estate,
Bhusawal, Road, Tq. Jamner,
Dist. Jalgaon

... Respondent

.....
Mr. R.S. Shinde, Advocate h/f Mr. V.P. Latange, Advocate for
Applicant
Mr. Rajendra N. Chavan, Advocate for Respondent
.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 11 JULY 2025

PRONOUNCED ON : 16 JULY 2025

PER COURT :-

1. Instant application is filed by the original complainant hereby seeking leave to question the judgment and order of acquittal passed by learned Judicial Magistrate, First Class, Jamner, Dist. Jalgaon in SCC No. 10/2024 dated 29.01.2018 acquitting respondent from offence under Section 138 of the Negotiable Instruments Act, 1881.

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2. Learned counsel for applicant would point out that, applicant/original complainant and respondent/accused are friends. That, for the purpose of purchasing agricultural land, hand-loan was taken. That, the said loan was extended by the applicant/complainant. That, in lieu of repaying the said hand loan, the respondent/accused issued a cheque bearing No. 272142 dated 01.10.2023 for an amount of Rs. 3,75,000/-. However, the said cheque was dishonoured upon presentation with the remark 'insufficient funds'. It is pointed out that, legal notice was issued and was duly received by respondent/accused, however, he failed to comply with the notice and on failure to pay the hand-loan in spite of demand, above proceedings were instituted.

3. Learned counsel further submitted that on getting convinced, learned trial court initially issued process, but subsequently, on appreciation of evidence, acquitted the accused. According to him, all essential ingredients for attracting offence under Section 138 were made out, however, still acquittal has been granted. Further according to him, there is improper appreciation of evidence as well as law and so, there being a good case in appeal on merits, and hence, learned counsel urges for leave.

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4. While answering, learned counsel for respondent/accused would submit that, complainant has miserably failed to prove the case against respondent/accused. That, the complaint contains vague and general allegations regarding the advancement of substantial loan, without specifying the quantum and without disclosing the details regarding the date, place, and manner in which the alleged hand loan was extended. According to him, even purpose for which the hand loan was taken, is not substantiated by leading any sort of evidence, and therefore, the end result was no case made out to attribute the charge. Hence, learned counsel urges to refuse the leave.

5. Heard. Perused the judgment sought to be challenged.

6. It appears that complaint was lodged and learned J.M.F.C. undertook the process of verification on 06.11.2015 and thereafter issued process under Section 204 (1) of the Code of Criminal Procedure. In consequence to it, respondent/accused appeared and contested. It is apparently emerging from the judgment sought to be impugned that, complainant has set up a case that he extended the huge loan. Thus, the complaint does

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not specify the actual quantum of the hand loan allegedly borrowed by the respondent/accused. It is also emerging that in what form, he extended the loan is also not stated. Essential requirement for attracting Section 138 of the N.I. Act are, (a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier; (b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and (c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice. These, requirements are patently missing from the complaint. The case set up by applicant/complainant was regarding extension of hand loan for purchasing agricultural land by respondent/accused. However, there is no evidence in that regard. Hence, on several counts, complainant's case is apparently weak. Therefore, this Court does not find any infirmity in the judgment and order of

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acquittal. No case being made out on merits, leave is liable to be refused. Accordingly, I proceed to pass the following order :

ORDER

- I. Leave is refused.
- II. Application is rejected.

ABHAY S. WAGHWASE,
JUDGE

S P Rane