



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO.52 OF 2025

Shree Gauri Traders, Dharmabad,
Through its Proprietor,
Godawari Rajeshwar Yeotiwad,
Through Power of Attorney,
Rajeshwar Rajanna Yeotiwad,
Age : 60 years, Occu. : Business,
R/o. Ganga City, Dharmabad,
Tq. Dharmabad, Dist. Nanded.

... Applicant
(Orig. Complainant)

Versus

Linguram Potanna Panandwar,
Age: 57 years, Occu. : Private Service,
Proprietor M/s. Yogesh Commission Agent,
Market Yard, Dharmabad,
R/o Yetala, Tq. Dharmabad,
Dist. Nanded.

... Respondent
(Orig. Accused)

.....
Ms. Rani Bharuka - Bora h/f. Mr. Satyajit S. Bora, Advocate for Applicant.
Mr. Arvind Ramnath Kawade, Advocate for Respondent.
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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 01 OCTOBER 2025

PRONOUNCED ON : 09 OCTOBER 2025

ORDER :

1. Present application is at the instance of original complainant, who had instituted proceedings under section 138 of Negotiable Instruments Act against the present respondent and the respondent ultimately came to be acquitted by judgment and order dated 28.02.2025. Intending to file appeal, present application for leave has been pressed into service.

2. Learned counsel for applicant would point out that, complainant and accused are both working as commission agent in Agricultural Produce Market Yard Committee (APMC), Dharmabad. That, accused had accordingly purchased agricultural produce such as soyabean and other material and price towards the same was worth Rs.25,05,452/- for a period from April 2020 to March 2021. That, there was outstanding amount of Rs.5,84,959/- towards the accused. That, towards such legal debt, she would submit that cheques were issued, but they were dishonoured and after mandatory legal demand notice and when there was no response, proceedings under section 138 of N.I. Act came to be instituted. According to her, the transaction was cogently proved. Moreover, signatures over the cheques were not disputed or denied by accused to specific question under 313 of Cr.P.C.. That, there is admission about transaction and cheques. However, according to her, in spite of so, learned trial court has observed that there is no documentary evidence regarding the transaction and learned trial court directly acquitted the accused by dismissing the appeal.

3. She further submits that, here, neither business relations nor transactions are questioned or denied. Factum of issuance of the cheques towards outstanding amount being under signature of accused, which is

crucial aspect, is also not refuted in the trial court. Still for want of exact documents of alleged transaction, erroneous finding is recorded that complainant failed to establish business transaction. That, very cheques under signature is admitted and hence it is her submission that, appellant has a good case on merits and moreover she urges to remand the matter back in trial court for giving opportunity to both sides for fresh consideration. She seeks reliance on the judgment of Hon'ble Supreme Court in the case of *Kalamani Tex and Ors. v. P. Balasubramanian*, *MANU/SC/0066/2021*.

4. In answer to above, learned counsel for respondent would submit that complainant failed to discharge the primary burden of showing business transaction, more particularly, regarding cheque in question. According to him, each business transaction as well as each of the cheque therein, should be substantiated along with existing legally enforceable debt i.e. on the date of cheque. Here, it is not so established and according to him, there is no error on the part of learned trial court in dismissing the complaint and urges leave to appeal be refused.

5. Heard. Perused the papers. Present applicant seems to be instituted proceedings under section 138 of N.I. Act bearing S.C.C. No. 17 of 2022 contending both complainant and accused to be commission

agent in market yard and accused purchasing agricultural produce like soyabean and other material worth Rs.25,05,442/- for a period from April 2020 to March 2021. Therefore, *prima facie*, as submitted duration of transaction has come on record. According to complainant, accused only paid Rs.19,20,493/- and an amount of Rs.5,84,959/- was outstanding towards accused and on demand towards said dues, cheques in question seems to be issued.

6. Submissions made before this court that business relation, issuance of cheque and more particularly signature over it, have not been denied in the trial court as well as before this court, has force. Even submissions made that while answering under section 313 of Cr.P.C. also there is no denial to the above extent. With such state of affairs, when other ingredients like demand notice within stipulated period, failure to repay cheque amount being available, in the considered opinion of this court *prima facie* case has been shown by complainant.

7. Learned trial court in its judgment and order dated 28.02.2025 seems to have observed that there is no documentary evidence about actual business transaction related to cheque in question. However, in view of above discussion, duration of transaction, issuance of cheque and signature over it not being disputed and accused having

failed to rebut initial presumption emerging in the case in hand, there is a case to be tried.

8. Learned counsel for applicant urged that matter be remanded back to trial court for fresh consideration. Such proposition is also not countered by learned counsel for respondent. Therefore, case is remanded back for fresh consideration and learned trial court shall take endeavor to give priority to the matter, more particularly considering the year of the complaint. Hence, the following order is passed :

ORDER

- (i) Application stands allowed.
- (ii) Leave is granted to file Appeal.
- (iii) Registry to register the Appeal.

In Appeal the following order is passed :

(iv) The impugned judgment and order dated 28.02.2025 passed by learned Judicial Magistrate First Class, Dharmabad in Summary Criminal Case No. 17 of 2022 is hereby set aside.

(v) Matter is remanded back to the file of learned Judicial Magistrate First Class, Dharmabad, who shall conduct hearing afresh and decide the same according to law.

(vi) Parties shall appear before the learned trial court on 10.11.2025 and further dates and future course shall be decided by the learned trial Judge.

(vii) The appeal is disposed off accordingly.

(ABHAY S. WAGHWASE, J.)