



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

**72 APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 158 OF
2024**

**MADHUKAR ROHIDS RAUT
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

...
Mr. Jadhav Yashwant Panditrao, Advocate for Appellant
Mr. R. D. Raut, APP for Respondent No.1-State
Mr. Deshmukh Vivekanand B., Advocate for Respondent No.2

....

CORAM : SANJAY A. DESHMUKH, J.

DATED : 20/01/2025.

P. C. :

1. This is an application for leave to file an appeal by private party under Section 419 of Bharatiya Nagarik Suraksha Sanhita, 2023 (in short 'BNSS').

2. Heard both sides at length. Perused the application.

3. The learned counsel Mr. Jadhav for the applicant / complainant pointed out that signatures on the cheques are admitted by the respondent No.2 / accused. The amount of cheques was paid to the respondent No.2 / accused by cheques as well as cash in hand. An amount of Rs.59,600/- was paid in cash and remaining amount was paid by cheques. There is variance

between defence of the respondent No.2 / accused that once he says that while shifting the shop, cheques were stolen by the complainant and at the same time he came with a case that those cheques were lost during journey. He submitted that there is presumption under Section 139 of the Negotiable Instruments Act, 1881 (in short 'NI Act') and that is not rebutted by the respondent No.2 / accused. He did not enter into witness box to rebut that presumption. He pointed out that the reasons and findings of the trial court are not legal and correct. He submits that his application deserves to be allowed.

4. The learned counsel Mr. Deshmukh for the respondent No.2 / accused strongly opposed the application and submitted that from the evidence of Deepak Jyotiram Bhatbhange (CW-4), who is a Chartered Accountant, it is revealed that income tax returns of the applicant / complainant during the period from 2012 to 2016 do not disclose that the said amount was given to respondent No.2 / accused. It has been shown in the year 2017 for the first time. He pointed out complaint Exhibit-57 which was given to the police on 06/12/2016 that cheque book of respondent No.2 / accused was stolen. He pointed out that thereafter, the notice dated 20/03/2017 was sent by the applicant /complainant. According to

him, it is clearly established that after the complaint was lodged, the cheques are deposited by the applicant / complainant in the bank account for realization. The learned counsel for the respondent No.2 / accused further pointed out that the cheques were issued in the name of accused by the complainant for realizing that amount from time to time which was withdrawn and immediately repaid to the complainant. However, cheques were not issued from his saving account. It is not that accused used that amount for him. He submitted that the reasons and findings of the trial court are legal and correct and no interference is warranted in it.

5. Perused the complaint, impugned judgment and copies of evidences on record. After considering the matter before this court, it appears that the complaint regarding theft of the cheques of the respondent No.2 / accused was given to the police on 06/12/2016 and thereafter notice dated 20/03/2017 was issued by the applicant / complainant to respondent No.2 / accused. This fact goes to the root of the matter that the disputed cheques were already stolen. Further, the evidence of Deepak Jyotiram Bhatbhangre (CW-4) - Chartered Accountant is crystal clear that though the alleged amount was given to respondent No.2 / accused

in the year 2012, it was not shown in the income tax returns of the applicant / complainant till the year 2017. For that no any explanation is tendered. From these two facts discussed above, respondent No.2 / accused has established his defence that there was no legal liability to pay that amount. He has rebutted the presumption under Section 139 of the NI Act on the basis of principle of preponderance of probabilities. Needless to state that the presumption in such cases can be rebutted without entering into the witness box by the accused. From the evidence adduced by the complainant, the presumption of innocence of accused is not rebutted. Therefore, this court is of the view that reasons and findings of the learned trial court are legal, correct and no interference is warranted in it. Therefore, the application for leave to file appeal deserves to be rejected. The argument of the learned counsel for the applicant / complainant is not acceptable in this regard. The application is rejected.

(SANJAY A. DESHMUKH, J.)