

MJ Jadhav

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**APPLICATION FOR LEAVE TO APPEAL (PVT.) NO. 568 OF 2018
WITH
INTERIM APPLICATION NO. 3684 OF 2024
IN
APPLICATION FOR LEAVE TO APPEAL (PVT.) NO. 568 OF 2018
WITH
APPLICATION FOR LEAVE TO APPEAL (PVT.) NO. 567 OF 2018
WITH
INTERIM APPLICATION NO. 3685 OF 2024
IN
APPLICATION FOR LEAVE TO APPEAL (PVT.) NO. 567 OF 2018**

Nabkumar R Golui (Since Deceased) ... Applicant

Vs.

State Of Maharashtra and Anr. ... Respondents

Mr. Arnab Biswas for the Applicant.

Mr. D. J. Haldankar, APP for the State.

Mr. Subhash L. Kharat for Respondent No.2.

CORAM : GAURI GODSE, J.

DATED : 2nd DECEMBER 2025

ORDER:

**INTERIM APPLICATION NO. 3684 OF 2024 AND
INTERIM APPLICATION NO. 3685 OF 2024**

1. These applications are filed to bring on record the names of the heirs and legal representatives of the deceased applicant in both

applications. The deceased applicant is the original complainant who had filed the complaint under Section 138 of the Negotiable Instruments Act. There is a delay of 215 days in filing the applications.

2. Learned counsel for the applicant submits that the reasons for the delay are explained in paragraphs 3 and 4 of the applications. He also relies on the additional affidavit to support his contentions that the date of filing the applications on the website is the date on which the applications were lodged through the e-filing portal. He therefore submits that, in light of the date of the e-filing, there is a delay of 215 days in filing the application.

3. Learned counsel for respondent no.2. opposes the application on the ground that vague reasons are mentioned, and there is no sufficient ground raised for condonation of the delay.

4. I have perused the applications and the supporting affidavits in both applications. In the facts and circumstances of the case, and in light of the reasons stated in the application and the additional affidavit, I see no reason to disbelieve the grounds raised for condonation of delay. Hence, in the facts and circumstances of the case and in view of the reasons stated in the application and the additional affidavit, delay is condoned, and the applications are

allowed in terms of prayer clauses (a), (b) and (c).

5. Amendments shall be carried out within four weeks.

6. Interim Applications are disposed of.

APPLICATION FOR LEAVE TO APPEAL (PVT.) NOS. 568 OF 2018 AND 567 OF 2018

7. These applications are filed under Section 378(4) of the Criminal Procedure Code to seek leave to file an appeal challenging the learned Magistrate's orders acquitting respondent no. 2 of the offence punishable under Section 138 of the Negotiable Instruments Act. The parties in both applications are the same, and the transaction between them is identical. Since two cheques were dishonoured, two separate complaints were filed. Considering the common grounds in both applications and the common parties, both applications are decided by this common order.

8. Learned counsel for the applicant submits that the issuance of cheques is not disputed. Hence, the initial presumption under Section 119 is in favour of the complainant. The complainant has produced on record a copy of the agreement between the parties and supported the allegations by leading oral evidence. According to the learned counsel for the applicant, the complainant is a neighbour of the accused, and the accused intended to sell her flat,

which is adjacent to the complainant's flat. In view of the terms and conditions agreed between the parties, the complainant had paid an amount of Rs.15 Lakhs to the accused. An amount of Rs. 1,50,000/- was paid by cheque, and the remaining amount was paid by cash in instalments on various dates. Since the transaction failed, the accused had issued two cheques for repayment of the amount of Rs.15 Lakhs.

9. Learned counsel for the applicant submits that both the cheques were dishonoured, hence, a demand notice was issued, and since there was no compliance with the demand, two separate complaints were filed. Learned counsel for the applicant relies upon an additional affidavit to support the allegations. He submits that, by way of an additional affidavit, the applicant has produced on record a copy of the Bank statements to support the contention that the entire amount of Rs. 15 Lakhs was paid to the accused. He therefore submits that since there was sufficient evidence produced to show the payment made to the accused, the presumption under Section 139 is also in favour of the complainant. In the absence of any rebuttal evidence, the accused would be liable to be convicted. To support his submissions regarding the presumption under Sections 119 and 139 of the Negotiable Instruments Act, learned counsel for the applicant relied upon the following decisions of the

Apex Court.

1. *Hiten P. Dalal Vs. Bratindranath Banerjee*¹

2. *Bir Singh Vs. Mukesh Kumar*²

10. Learned counsel for the applicant submits that it is a well-established legal principle that once the issuance of a cheque is not disputed, the onus would shift upon the accused to prove that the cheque was not issued towards any legally enforceable liability. Thus, according to the learned counsel for the applicant, in the absence of any rebuttal evidence, the presumption is in favour of the complainant. Hence, the complaint could not have been dismissed on the ground that the cheque was not issued in respect of any legally enforceable liability. He therefore seeks leave to file an appeal.

11. Learned counsel for the accused points out that the copy of the Bank statement relied upon by the applicant as additional evidence was not produced before the trial Court. Hence, the same cannot be relied upon at this stage. He further submits that the accused led evidence to raise a defence that the amounts were never received from the complainant as alleged in the complaint, and the complainant misused the cheque given towards a loan

1 (2001) 6 SCC 16

2 (2019) 4 SCC 197

proposal. He therefore submits that the accused has raised a probable defence by examining herself and an independent witness to support the defence. Hence, the trial Court has rightly acquitted the accused on the ground that a probable defence has been raised and the presumption stands rebutted.

12. I have perused the evidence on record. Learned counsel for the applicant has tendered an additional compilation of the evidence led on behalf of the parties. The transaction between the parties is not in dispute, and the cheque issued is also not in dispute. However, the accused had led evidence to support her defence that the complainant misused the cheque towards a loan proposal. From the admissions made during the complainant's cross-examination and the evidence led by the accused, it appears that the defence raised concerns regarding the cheque issued in connection with the loan proposal.

13. The independent witness examined by the accused has stated that the accused and the complainant had cordial relations and were neighbours. The house keys of the accused were kept with the complainant, as he was her neighbour. It is not disputed that the complainant used to visit the house of the accused, and the house keys of the accused were with the complainant. In view of

these suggestions put to the complainant in the evidence, and the evidence of the accused and the supporting witness examined by the accused, sufficient doubts and suspicions have been created on the allegations made by the complainant that the dishonoured cheque was towards repayment of the amount paid by the complainant.

14. In the absence of any sufficient evidence that the entire amount as alleged was paid to the accused, the trial Court has refused to accept the allegations that the dishonoured cheques were towards any legally enforceable liability. The complainant has stated in his evidence that he would examine any independent witness to support the allegation. However, he has failed to examine any independent witness. Considering the evidence of the accused and the supporting independent witness, the presumption in favour of the complainant is rebutted, as the accused has raised a probable defence. Thus, considering the rebuttal evidence, the trial Court held that the allegations were not proved beyond a reasonable doubt and, accordingly, the accused cannot be convicted of the offence.

15. In view of the evidence led in the present case and the admission given by the complainant in the cross-examination, the

decisions relied upon by the learned counsel for the applicant would not be of any assistance. There can be no dispute on the legal propositions governing the presumption under Sections 119 and 139 of the Negotiable Instruments Act. However, in the present case, there is sufficient evidence on record to raise suspicion and doubt regarding the allegations. The evidence led by the accused raises a probable defence that the cheque was not issued towards any legally enforceable liability.

16. Considering the evidence on record, the view taken by the trial court is a plausible view that could have been taken based on the evidence on record. There can be interference in an appeal against acquittal if, after reappreciation of evidence, the only conclusion that could be drawn is that the guilt of the accused is proved beyond a reasonable doubt. In the present case, there is no ground for granting leave to file an appeal against the order of acquittal.

17. The Application is, therefore, dismissed.

(GAURI GODSE, J.)