



Corrected as per
Court's order
dated 21.07.2025

(1)

943.appa.471.2023 - corrected

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPA) NO.650 OF 2025
IN
CRIMINAL APPEAL STAMP NO.3218 OF 2023

Devidas s/o Govindrao Kirpane
Vs.
Dr. Abhay s/o Balkrishna Makode

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. P. S. Chawhan, Counsel for the appellant/applicant.
Mr. Rahul Shukla, Counsel for the respondent.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 08/07/2025

1. By this application, the applicant is seeking leave to prefer an appeal.

2. The appellant/applicant is the original complainant who filed the complaint under Section 138 of the Negotiable Instruments Act bearing No. Summ. Crim. Case No.122/2005 which was decided by the learned 5th Joint Judicial Magistrate First Class Special Court for Negotiable Instruments Act, Nagpur and on appreciating the evidence, the Judicial Magistrate has convicted the present respondent. Being aggrieved with the same, the accused has preferred a Criminal Appeal No.319/2010 which was decided by the learned Sessions Court i.e. Additional Sessions Judge, Court No.8, Nagpur, who after considering the evidence, acquitted the respondent.

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Being aggrieved with the same, present appeal is preferred along with the application for leave to file an appeal.

3. Heard learned Counsel Mr. Chawhan for the applicant, who invited my attention towards the observation of the learned Judicial Magistrate First Class, who has observed that the cheque was issued against the discharge of legally and enforceable debt and that observation is turned down by the Sessions Judge while deciding the appeal. In Para No.22 of the Judgment of the learned Sessions Judge, the Sessions has observed that the cheque in question was issued towards liability which include the amount borrowed by the accused from the complainant and the quantum of consideration of the commercial accommodation which was agreed subsequently. However, it is observed that there is no cogent and convincing evidence to show that there was any enhancement of consideration amount and therefore, a serious doubt is casted.

4. Learned Counsel for the applicant invited my attention towards the observation of the learned Judicial Magistrate and submitted that upon perusal of the evidence on record the Judicial Magistrate came to the conclusion that the complainant had proved the case against the accused and thereafter the accused was convicted. Thus, the appellant has many arguable points in the present appeal, but the

appeal would take its own time. In view of that, he be permitted to proceed with this appeal.

5. Learned Counsel for the respondent strongly opposed the said application and submitted that the learned Sessions Judge has considered every aspect and observed that the accused has rebutted the presumption, there was no legally enforceable debt and the complainant failed to establish the necessary ingredients to constitute the offence. In view of that, the application deserves to be rejected.

6. On hearing both sides and on perusal of the both the impugned judgments, it reveals that the applicant has succeeded in pointing out that he has many arguable points in the present appeal. In view of that, the application for leave to file an appeal deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

- (i) The application for leave to file appeal is allowed.
- (ii) Leave is granted.
- (iii) Record and proceedings be called.

Criminal Application (APPP) No.1089/2023

1. By this application, the respondent is seeking directions for the appellant to refund the amount of Rs.4,75,000/-.

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2. Learned Counsel for the appellant shall file a reply on this application.

3. Stand over after **two weeks** for reply on the Criminal Application (APPP) No.1089/2023.

(URMILA JOSHI-PHALKE, J.)