

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO.08 OF 2025

Anisa Begum W/o. Abdul Hamid,
Age : 62 years, Occu. : Household,
R/o. Plot No. 19, Farhat Nagar,
Near Boon School, Aurangabad,
Through her son G.P.A.,
Mr. Qureshi Wasim Raja S/o. Abdul Hamid,
Age : 40 years Occu. : Doctor,
R/o Plot No. 19, Farhat Nagar,
Near Boon School, Aurangabad.

... Applicant

Versus

Kavita Dinkar Navgire,
R/o. Impact Residency Flat No.3,
Deva Nagari, Near Shanoor Miya Dargah,
Aurangabad.

... Respondent.

.....
Mr. G. R. Syed, Advocate for Applicant.
Mr. R. V. Gore, Advocate for Respondent.

.....

CORAM : ABHAY S. WAGHWASE, J.
RESERVED ON : 26 FEBRUARY 2026
PRONOUNCED ON : 27 FEBRUARY 2026

ORDER :

1. This leave application is on account of judgment and order passed by learned Additional Chief Judicial Magistrate, Court No.5, Aurangabad in S.C.C. No. 8466 of 2017, dated 10.01.2024.

2. Learned counsel for applicant pointed out that, present applicant had instituted proceedings under section 138 of Negotiable

Instruments Act against present respondent. He pointed out that, evidence of complainant was over. However, without further evidence or applicant facing cross, accused has been acquitted. That, there was no contest. He pointed out that, order of closure of evidence was passed on 21.12.2023 and directly matter kept for argument and finally impugned order has been passed. Therefore, according to learned counsel, there is denial of fair opportunity to prove the case. There is a good case in appeal and therefore, he urges for leave.

3. Learned counsel for the respondent would justify the impugned order and opposed the application for leave.

4. After considering the submissions and on going through the papers as well as judgment impugned herein, it is emerging that, present applicant filed S.C.C. No. 8466 of 2017 under section 138 of N.I. Act against present respondent. It appears that, complainant adduced evidence through her son and also produced document Exhs.41 to 48. However, on 21.12.2023 trial court passed an order that 'evidence of complainant is closed' without cross examination, as C.W.1 Qureshi Wasim Raja had failed to make himself available for cross examination and directly statement under section 313 of Cr.P.C. has been recorded. Therefore, virtually for want of failure to

make witness available for cross examination, initially order of evidence closed is passed, and shortly thereafter, impugned order has been passed.

5. Learned counsel for applicant undertakes to conduct the proceedings diligently. In the light of above discussion, prima facie, it appears that on account of failure to make witness available for cross examination, the order of 'closure of evidence' is passed, followed by impugned order directly acquitting the accused. Consequently, leave to file appeal deserves to be granted. Hence, the following order is passed.

ORDER

- (i) Application stands allowed.
- (ii) Leave is granted to file Appeal.
- (iii) Registry to register the Appeal.
- (iv) List the appeal for further consideration on 05.03.2026.

(ABHAY S. WAGHWASE, J.)