



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO FILE APPEAL BY PVT. PARTY NO. 49 OF 2025

Shri Gangaram s/o Chotulal Bhatawale,
Age : 83 years, Occ : Business,
R/o : In front of Doordarshan Kendra,
Vasarni, Taluka and District Nanded.

... Applicant

Versus

Shri Prashant s/o Panditrao Pande,
Age : 52 years, Occ : Business,
R/o: C/o Mateshwari Agro Chemicals,
Bhangadiya Complex, Near SBI Bank,
New Mondha, Nanded.
Alternate address of factory :
M/s. Mateshwari Agro Chemicals,
Khadgaon, Basmath, District Hingoli.

... Respondent
[Orig. Accused]

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Mr. A. A. Mukhedkar, Advocate for the Applicant.
Mr. P. S. Anerao, Advocate for the Respondent.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 19.01.2026

Pronounced on : 20.01.2026

ORDER :

1. Dissatisfied by the order of acquittal dated 31.07.2024 passed by learned Judicial Magistrate First Class, Court Room No. 2, Nanded in S.C.C. No. 706 of 2012, as original complainant is desirous of filing appeal, by way of instant application, he urges for leave.

2. Learned counsel for applicant would point out that, complainant owns a generator which he gives on rent. According to learned counsel, accused, who runs Mateshwari Agro Chemicals, had taken the generator on rental basis for more than a year. That, initially there was regular payment of rent, but subsequently, there was default and as dues had accumulated, on demand, accused issued three cheques, but on its presentation, the same were dishonoured and thereafter, when notice was dispatched and still there being failure to pay cheque amount, above complaint was filed.

3. Learned counsel pointed out that, all essential ingredients for attracting offence under Section 138 of the Negotiable Instruments Act, 1881 (NI Act) are available. According to him, there is no denial of transaction between complainant and accused, nor there is denial of issuing the signed cheques and therefore, it is submitted that, presumption under NI Act was duly attracted and even learned trial court held so. However, according to him, still trial court has acquitted the accused on the strength on defence evidence.

4. He further pointed out that, the evidence adduced by accused was not full proof. That, it was tried to be established that payments were made through one Sanjay, who was alleged to be partner of

accused. But, according to learned counsel, said Sanjay was personally liable to pay the said amount to the applicant as it was distinct transaction and payments made by him were not on behalf of accused-respondent. Thus, according to learned counsel, there was no rebuttal evidence from accused and therefore having failed to probabalize his defence, learned counsel would submit that, learned trial court ought not to have acquitted the accused, but the same having been done, it is his submission that there is a good case to be contested in appeal and so he prays for leave.

5. Learned counsel for original accused would support the order of acquittal by pointing out that complainant had failed to establish the very foundational facts of generator being taken on rent from accused. He pointed out that, omnibus statements are made in the statement. He further pointed out that, moreover there were no dues as alleged and accused has adduced evidence of the witness who had duly paid the dues. That, nothing had remained at the end of accused. That, cheque issued by way of security was rather misused and therefore he justifies the order of acquittal.

6. After considering the above submissions and on going through the papers, it is emerging that present applicant instituted S.C.C. No.

706 of 2012 on the premise that accused, who conducted business of Mateshwari Agro Chemicals at Khadgaon, approached applicant for supply of generator on rental basis, which was duly supplied for more than one year. It is further case of complainant that, initially there was payment of rent for use of generator but thereafter, there was default and on demand of rent, accused allegedly issued two cheques of Rs.1,50,000/- each and on cheque of Rs. 54,000/-, but on its presentation the same were dishonoured, followed by notice, which in spite of being served, as there was no payment, above complaint was instituted.

7. In support of his case complainant seems to have placed on record his own evidence at Exhibit 9, evidence of bank official CW2-Suryakant and one Sherkhan Pathan CW-3, who allegedly delivered generator to the accused. Applicant also placed on record cheques, bank memo, copy of notice etc. It seems that learned trial court, on the strength of above evidence, proceeded to draw presumption under Sections 118 and 139 of NI Act.

8. On the other hand, accused, while denying the case of legally enforceable dues by way of rent, seems to have adduced evidence of four witnesses. He also took a stand that, he had paid more than what

was due towards him i.e. to the tune of Rs.3,26,000/-. In support of above contention, he has adduced evidence of one Sanjay Fiske (DW4), one Satishkumar Loka (DW1) as well as Mohd. Usman (DW2). Crucial Evidence is of DW1 Sanjay Fiske. It is through him accused claims to have paid the dues towards rent of generator. Evidence of this Witness is at Exhibit 150 and he seems to have stated that, at the instance of Prashant Pande, i.e. present respondent-original accused, he had paid Rs.1,75,000/- to complainant on his account in installment of Rs.25,000/- each and he also claims to have handed over bank receipts regarding said transfer, of which entry was taken in the account book. The said receipts are Exhibits 92 to 98. Resultantly, there is evidence regarding accused, through DW4 Sanjay, clearing dues of complainant. Branch Manager of the bank is also examined wherein account of complainant is maintained. Therefore, there is no error on the part of trial court in holding that dues towards rent of accused are demonstrated to be paid through an independent witness, who is made to step in the witness box.

9. Further, as pointed out, complainant has not narrated exactly when and for which period he supplied generator. There is nothing in black in white regarding rental agreement. Moreover, when complainant failed to demonstrate that the cheques in question were

towards dues or legally enforceable debt, no fault can be found in the order of acquittal passed by learned trial court. No point on merit is made out to accord leave. Hence, following order is passed :

ORDER

- I. Leave is refused.
- II. Application is dismissed.

[ABHAY S. WAGHWASE, J.]

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