



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO. 14 OF 2025

Sau. Shaila Keshav Wakale
Age : 50 years, Occ : Household,
R/o : Sangharsh Chowk, Savedi Gaon,
Taluka and District Ahmednagar. ... Applicant

Versus

Sau. Sunanda Anil Karale,
Age : 56 years, Occ. Business,
R/o Ujwala Housing Society, Pipeline Road,
In front of Tulajabhavani Temple, Ahmednagar,
Taluka and District Ahmednagar. ... Respondent

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Ms. Gargee Gujar h/f Ms. Sunita G. Sonawane, Advocate for the
Applicant.
Mr. V. S. Bedre, Advocate for the Respondent.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 08.06.2026
Pronounced on : 09.06.2026

ORDER :

1. This leave to file appeal is at the instance of original complainant, who had instituted proceedings under Section 138 of the Negotiable Instruments Act, 1881 (NI Act) bearing S.C.C. No. 3301/2017 against present respondent and had also succeeded in proving the said charge. Present respondent-original accused moved the Court of learned Additional Sessions Judge, Ahmednagar by way

of Criminal Appeal No. 10 of 2022 and by judgment and order dated 23.09.2024, the same came to be allowed, thereby acquitting the present respondent-accused. Hence, instant leave application by original complainant.

2. Learned counsel for the applicant would submit that, applicant and respondent had long acquaintance of 13 to 14 years. Due to friendly relations, as respondent-accused was in need of Rs.3,00,000/- to repay a loan, on request to that extent, complainant extended a hand loan which was assured to be repaid within three months, however, said timeline was not met and after hot persuasion, a cheque was issued but on its presentation, it was dishonoured and therefore, after legal notice, when there was further failure to pay the cheque amount, action under Section 138 of the NI Act was initiated vide S.C.C. No. 3301/2017 in the Court of learned Additional Chief Judicial Magistrate, Ahmednagar.

3. It is further pointed out that in support of complaint, applicant had adduced her own oral evidence and had also placed on record documentary evidence including cheque, legal notice, bank memo etc., and after considering the respective cases advanced by each side, learned trial court was pleased to convict the present respondent for

offence under Section 138 of the NI Act vide judgment and order dated 05.03.2020.

4. She would further point out that, above judgment and order of conviction was reasoned judgment and on the basis of oral and documentary evidence, and as such, there was no need to interfere as there was no illegality or perversity. However, on appeal by present respondent-original accused, said judgment has been disturbed and overturned without assigning sound reasons. Consequently it is her submission that, applicant has a good case on merits in appeal and so she urges for leave to file appeal.

5. In answer to above, Mr. Bedre, learned counsel for the accused would criticize the judgment and order of learned trial court and would justify the order of appellate court by submitting that, complainant has failed to prove that there was legally enforceable debt. Secondly, there was no valid transaction between complainant and accused. On the contrary, the instrument in question was drawn in the name of Asmita Mahila Swayam Sahayata Bachat Gat, and not in personal capacity and rather, said Bachat Gat was also not made party and therefore, there being no case on merits and trial court's order being illegal and perverse, the same was rightly interfered with.

He prays to refuse leave as, according to him, there is no case made out on merits.

6. Heard. Re-appreciated the respective cases advanced in the trial court. Sum and substance of the complaint before trial court is that, on account of friendly relation, complainant extended hand loan of Rs.3,00,000/- and towards its repayment, cheque was issued by accused but it was dishonoured for "Funds Insufficient". Therefore, after legal notice, proceedings under Section 138 of the NI Act were taken up. However, as pointed out, though there was loan transaction on the backdrop of friendly relation and acquittance, the instrument cheque in question is apparently of the account of Bachat Gat and not in the individual capacity. The complainant failed to demonstrate as to how cheque of Bachat Gat account, which is a joint account, was issued for repayment of personal debt. Complainant in cross has admitted that the instrument in question is drawn on Bachat Gat, namely, Asmita Mahila Swayam Sahayata Bachat Gat, and drawer is the said Bachat Gat and not accused. Secondly, accused had signed the cheque in question in the capacity of Secretary of the Bachat Gat. However, admittedly there was no transaction between accused and Bachat Gat. Therefore, it was rightly held by the first appellate court that there was no legally enforceable debt. It has transpired that even

defence of difference in cheque was taken by present respondent in first appellate court. This further contributed to the merits of case of complainant. Such crucial aspects does not seem to have been comprehended by the learned trial court and therefore, learned first appellate court rightly interfered. With such material on record, this Court is of the considered opinion that no fruitful purpose would be served by according leave as prayed. Hence, following order :

ORDER

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

[ABHAY S. WAGHWASE, J.]

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