



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO. 96 OF 2025

- . Mahatma Phule Multistate Co-Operative
Credit Society Bhingar,
Ahmednagar, Through Representative
Rahul Ashok Bankar
Age: 26 years, Occu.: Service,
R/o. Nagar Devle, Bhingar,
Tal. and Dist. Ahmednagar.Applicant
(Original Complainant)
- Versus

1. Akshay Govind Devkate
Age: 27 years, Occu.: Agriculture,
R/o. Taradgaon, Nimbodi,
Tal. Karjat, Dist. Ahmednagar.
2. The State of MaharashtraRespondents
(Respondent no.1 Orig. Accused)

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Advocate for Applicant : Mr. Rajendra Sudam Kasar
Advocate for Respondent no.1: Mr.Z. H. Farooqui
APP for Respondent no.2: Mr.N.R.Dayma

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 06 JANUARY, 2026

PRONOUNCED ON : 07 JANUARY, 2026

ORDER :

1. Feeling dissatisfied by the order dated 02-05-2025, passed by
Additional Chief Judicial Magistrate, Court No.19, Ahmednagar, in
SCC 522 of 2023, thereby acquitting present respondent no.1 from
offence under Section 138 of the Negotiable Instruments Act (the NI

Act), applicant/original complainant seeks leave to file appeal.

2. Present applicant instituted above referred proceedings under Section 138 of the NI Act, on the premise that respondent no.1/original accused borrowed loan from the complainant, which is a Co-operative Credit Society, to the tune of Rs.20,00,000/-. Towards repayment of outstanding loan, a cheque was allegedly issued by the accused, but the same, on its presentation, was returned dishonoured and therefore, when there was failure to pay the cheque amount in spite of demand notice, proceedings under Section 138 of the NI Act was instituted.

In the trial Court, accused/present respondent appeared and contested the case denying receipt of demand notice.

3. After appreciating the respective cases advanced by each sides, learned trial Court recorded finding that complainant had failed to prove that demand notice was sent to the address of the accused and as such essential ingredients of Section 138 of the NI Act being missing, acquitted the accused by impugned judgment, which is sought to be questioned by way of appeal.

4. Learned counsel for the applicant pointed out that, learned trial Court has erred in acquitting the accused on above sole ground. He would point out that, notice was despatched on the address, which was supplied by accused over the loan application as well as the address reflected on the Aadhar Card. That, there was postal acknowledgment in support of service of notice, but both these aspects are not considered and appreciated by the learned trial Court and so it is his submission that acquittal was unwarranted and there being a good case on merits in appeal, he prays for leave to file appeal.

5. Per contra learned counsel for respondent would point out that a specific plea taken by accused in learned trial Court is regarding non-receipt of legal demand notice, which is essential ingredients for attracting offence under Section 138 of the NI Act. He pointed out that, accused is resident of Taradgaon, Tq.Karjat, District Ahmednagar, whereas notice carries address of Taradgaon Limbodi, Tq.Karjat, District Ahmednagar, which is not his address and he never resided there and therefore, when there was no notice, he justifies order of acquittal.

6. After considering the above respective cases of each sides and on going through judgment under challenge, it appears that learned trial Court has formulated a specific issue regarding despatch/receipt of demand notice by way of point no.3 and it is answered in paragraph 10 to 14 of the impugned judgment. It seems that, complainant, while under cross-examination, has admitted that villages by name Taradgaon and Taradgaon Limbodi are two distinct villages and he seems to have categorically admitted that no notice was despatched on the address of Taradgaon, Tq.Karjat, rather notice was despatched to Taradgaon Limbodi, Tq.Karjat. It is a specific case of accused that, he resides at Taradgaon. Resultantly, in view of above, there is no notice to the accused on the address on which he resides.

Therefore, presumption follows that there is no notice. Consequently, in the light of above admission of complainant, no fault can be attributed to learned trial Court in finding essential ingredients to be not met and to further acquit accused.

No case being made out on merits, leave is refused. Hence, following order :

ORDER

The application is rejected.

(ABHAY S. WAGHWASE)
JUDGE

SPT