



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT.PARTY NO.120 OF 2025

Ambika Enterprises Through
Prop. Ankita Kunal Bhagat,
Age : 27 years, Occu. : Business,
Through General Power of Attorney,
Shri Kunal Vijay Bhagat,
Age : 29 years, Occu. : Business,
R/o. Burhannagar, Tq. Nagar,
Dist. Ahilyanagar.

... Applicant
(Orig. Complainant)

Versus

1. Prasad Sanjay Akubattin,
Age : 30 years, Occu. : Business,
2. Sanjay Akubattin,
Age : 52 years, Occu. : Business,
Both R/o. Zarekar Galli, Sub-Jail,
Nalegaon, Tq. Nagar,
Dist. Ahilyanagar.

... Respondents

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Mr. A. V. Bhagat, Advocate for Applicant.
Mr. A. A. Joshi h/f. Mr. S. V. Natu, Advocate for Respondents.
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CORAM : ABHAY S. WAGHWASE, J.
RESERVED ON : 23 FEBRUARY 2026
PRONOUNCED ON : 25 FEBRUARY 2026

ORDER :

1. Instant leave application is by original complainant, who had instituted proceedings under section 138 of Negotiable Instruments Act against present respondents, which ended up in acquittal, vide judgment and order dated 16.05.2025 passed by learned Additional Chief Judicial Magistrate, Court No.14, Ahmednagar.

2. Learned counsel for applicant pointed out that, present applicant had instituted above referred proceedings under section 138 of Negotiable Instruments Act bearing S.C.C. No. 1354 of 2023, against present respondents, on the premise that, on demand of accused and considering the friendly relations, hand loan of Rs.15,00,000/- was extended to accused. That, towards repayment of the same, accused had issued cheque of Rs.3,00,000/-, but the same was dishonoured, and therefore, above summary proceedings were instituted.

3. Learned counsel pointed out that, learned trial court has failed to appreciate that signature over the cheque was not disputed. That, available presumption under sections 118 and 139 of N.I. Act has totally ignored. That, accused has failed to rebut the said presumption. However, still acquittal is granted, according to him, he has a good ground in appeal, and therefore, learned counsel prays to grant leave.

4. Learned counsel for respondents would justify the order of acquittal by pointing out that, neither legally enforceable debt was proved so as to draw presumption available under Negotiable Instruments Act and secondly it was doubtful whether complainant had capacity at all to extend so much huge loan and such factors are rightly considered and appreciated by learned trial Judge.

5. On going through the record, as pointed out, it is emerging that, above summary proceedings were instituted by present applicant against present respondents contending that accused had business relations with complainant and her husband i.e. in the event management business. That, accused borrowed Rs.15,00,000/- and same were given to the accused on 18.02.2021. Towards its repayment, the cheque of Rs.3,00,000/- was issued, but it was dishonoured.

6. After going through the impugned judgment, it is emerging that, firstly, complainant herein had failed to prove the foundational facts of extension of hand loan to the tune of Rs.15,00,000/-. There is no supportive documents or evidence. Mere averments are raised that Rs.15,00,000/- were given. On the contrary, when in the complaint, it was stated that, complainant was not having the demanded amount of Rs.15,00,000/-, it was initially refused, but subsequently, on insistence, it is alleged that, said funds were raised. However, from what source the said amount was raised has not come on record. Admissions of the complainant, which are noted in paragraph no.10, gave severe dent to the complainant's case.

7. Learned counsel laid much stress on the specimen signature over the cheque was not disputed. However, law is fairly

settled that, mere admission of signature, is not sufficient when its content or execution, is denied by the accused. It is also fairly settled position that, accused can raise probable defence of legally enforceable debt. Here, very doubt to that extent seems to have been created.

8. There is difference between legal burden on complainant and evidential burden on accused. Unless foundational facts are proved, presumptions under sections 118 and 139 of N.I. Act cannot be drawn. Here, legally enforceable debt itself has not been substantiated, and therefore, in the light of averments raised, learned trial court was constrained to enter into the arena of capacity of complainant to extend such huge loan.

9. After going through the impugned judgment, this court does find any patent perversity or illegality. Essential ingredients of legally enforceable debt are not proved as required, resulting into acquittal. Hence, no point being made out on merits to accord leave, the same is deserves to be refused. Hence, the following order :

ORDER

- (i) Leave is refused.
- (ii) Application for Leave to Appeal by Pvt. Party is rejected.

(ABHAY S. WAGHWASE, J.)