



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

APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO. 143 OF 2025

Prasad Bapu Thokal

Age: 44 years, Occu.: Hotel Business,

R/o : Kamargaon, Tal. : Nagar,

District : Ahmednagar.

....Applicant
(Orig. Complainant)

Versus

Rohit Raosaheb Pawar

Age: 32 years, Occu.: Hotel Business,

R/o. : Supa, Tal. Parner,

District : Ahmednagar.

.....Respondent
(Original Accused)

.....

Advocate for Applicant : Mr. Yogesh Rajendra Neb

Advocate for Respondent : Mr.R.S.Kasar

.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 07 JANUARY , 2026

PRONOUNCED ON : 09 JANUARY , 2026

ORDER :

1. Original complainant, who instituted S.C.C. No.3297 of 2023, intends to file appeal against order of acquittal of present respondent from offence under section 138 of the Negotiable Instruments Act (NI Act) vide judgment and order dated 02-05-2025.

2. Above numbered case was filed by applicant on premise that, complainant owns hotel and lodge namely “Sukhsagar Hotel”. Due to friendly relations with respondent/accused, on request, lease agreement was executed with accused for running the hotel and lodge. Accordingly, on 18-01-2023, lease agreement was executed and it was decided that monthly rent for hotel would be Rs.75,000/- and for lodge, it would be Rs.71,730/- and the agreement period was from 18-01-2023 to 18-02-2023 and from 19-02-2023 to 18-03-2023. According to complainant, at the time of execution of agreement, accused issued a cheque on 05-04-2023 for amount of Rs.71,730/- for discharging the rent liability, but said cheque was dishonoured and therefore, after demand notice, when there was no payment of cheque amount, S.C.C. No.3297 of 2023 was instituted.

Accused appeared and denied the case of issuing cheque as claimed by complainant. His specific defence was that he had made payment of rent via PhonePe. That, there was no execution of any cheque as alleged and rather there is misuse of cheque for lodging complaint under Section 138 of the NI Act.

3. After appreciating the respective cases of both complainant and respondent, learned trial court recorded finding that there was no

legally enforceable debt and that rent amount was paid via PhonePe and case of misuse of cheque issued by way of security as put-forth by accused was accepted and accused came to be acquitted.

Dissatisfied by the same, now, complainant seeks leave of this Court to question the order of acquittal dated 02-05-2025 passed in S.C.C.No. 3297 of 2023.

4. Here, transaction of taking premises of complainant on rent has not been denied by the accused. He has also not disputed the cheque, but has set up a case that the same was not towards rent, but was towards security and rent amount was duly paid via PhonePe. On these lines, evidence has been adduced by both the accused as well as complainant. Though, initial presumption under Sections 118 and 139 of the NI Act arose, and there is discussion to that extent in paragraph 12 of the impugned judgment, the complainant, while facing cross-examination has admitted that, accused had paid rent through PhonePe i.e. for the period from 18-01-2023 to 18-02-2023 and he has admitted that agreement is only for a period from 18-02-2023 to 18-03-2023. He has also admitted about taking cheque at the time of agreement. In the cross-examination, complainant has admitted that, payments were made by accused via

PhonePe and also admitted about deposit of amount from accused on 23-01-2023.

5. It seems that complainant has adduced evidence of one Dattatraya Shankar Kadam, who was acquainted with both complainant and accused, and he deposed about lease agreement being executed in his presence between complainant and accused. However, this witness in cross-examination has admitted that accused had paid rent amount for the period from 18-01-2023 to 18-02-2023. This witness was recalled at the instance of complainant, but even in cross-examination at such recalling, he is unable to give dates and time of money transaction between the parties.

6. On the contrary, accused seems to have adduced evidence of Sachin Baban Gawali at exh.42 and he has deposed about hotel being given on rent only from February to March and about complainant seeking blank cheques from accused. His evidence has remained intact. Therefore, as pointed out by learned counsel for respondent, accused has succeeded in rebutting the presumption.

7. I have gone through the decision of Hon'ble Apex Court in the case of *Hiten P. Dalal v. Bratindranath B.Banerjee*, (2001) 6 Supreme

Court Cases 16, which is relied by the complainant. However, as the facts in the said case and facts of the case in hand are different, the same is not applicable in the present case.

Here, as pointed out, complainant could not discharge the burden that cheque in question was issued towards rent of hotel and lodge and he having admitted about receipt of rent from accused via PhonePe, question of existence of legally enforceable debt crops up.

Therefore, learned trial court, in the considered opinion of this court, has committed no error in acquitting the accused on account of failure to make case for offence under Section 138 of the NI Act. No good point is made out in present application so as to accord leave. Hence, following order :

ORDER

Application is rejected.

(ABHAY S. WAGHWASE)
JUDGE