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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 501 OF 2018
(Leave to file appeal)

Mahadev Haribhau Sirshat … Applicant
vs.
Kamble Krishna Dhullappa and Anr … Respondents

VARSHA VIJAY RAJGURU Digitally signed by VARSHA VIJAY RAJGURU Date: 2026.01.23 18:18:04 +0530

Mr.Dhiraj B. Bansode for Applicant
Mr. D.J. Haldankar, APP for the Respondent-State.

CORAM : GAURI GODSE, J.
DATED : 17th JANUARY 2026

ORDER:

1. This application is filed by the original complainant to seek leave to file the appeal to challenge the order passed by the learned Magistrate acquitting the respondent for the offence punishable under Section 138 of the Negotiable Instruments Act.

2. According to the complainant, two cheques were issued and both the cheques were dishonoured. Hence, two separate complaints were filed. Both the complaints were decided by a common judgment.

3. Learned counsel for the applicant submits that the respondent

has admitted issuing both the cheques to the complainant. The cheques were issued towards the transaction for the agreement for the sale of the premises owned by the complainant. The transaction was for sale in favour of one Bhagwat Namdeo Ubale. The accused had issued the cheque for Bhagwat Ubale, as he was the brother-in-law of Bhagwat Ubale. He submits that the copy of the agreement was produced on record to support the complainant's contention that the cheques were issued towards the legally enforceable liability in view of the terms and conditions of the agreement in favour of Bhagwat Ubale. He submits that the oral evidence was led by the complainant to support his contentions. Since, the transaction was not in dispute and the issuance of cheques was also not in dispute, the presumptions under Sections 119 and 139 was in favour of the complainant. Since, the presumptions were not rebutted by leading any evidence that the cheque amount was paid, the accused was liable to be convicted for the offence. He therefore seeks leave to file the appeal.

4. I have perused the evidence annexed to the application. In the cross-examination of the complainant and by examining Bhagwat Ubale in whose favour the alleged contract was executed, the accused has raised a defence that the transaction was not complete and the possession was not handed over. Hence, there is

no question of depositing the cheques. Even in the cross-examination of the witness examined by the accused, the witness has maintained his contention that the transaction was not complete. In the absence of evidence that the transaction was complete and the cheque amount was due and payable towards the contract as alleged, the trial court has acquitted the respondent for want of sufficient evidence that the cheques were issued towards any legally enforceable liability.

5. On perusal of the evidence, it appears that there is no sufficient evidence to conclude that the transaction as alleged by the complainant of the agreement executed with the Bhagwat Ubale was complete. The accused examined the Bhagwat Ubale to support his defence that the cheques were not issued towards any legally enforceable liability as contended by the complainant. Thus, in the absence of any sufficient material to support the complainant's contention that the sale transaction between him and Bhagwat Ubale was complete and the cheque amount had become due and payable, a serious doubt and suspicion is raised on the contention and allegations made against the accused.

6. Considering the evidence on record, the view taken by the trial court is a plausible view that could have been taken based on

the evidence on record. There can be interference in an appeal against acquittal if, after reappreciation of evidence, the only conclusion that could be drawn is that the guilt of the accused is proved beyond a reasonable doubt. In the present case, there is no ground for granting leave to file an appeal against the order of acquittal.

7. The Application is dismissed.

(GAURI GODSE, J.)