IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

HUSENBASHA RAHAMAN NADAF
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Date: 2026.10.15 18:42:35 +0530

APPLICATION FOR LEAVE TO APPEAL (PVT.) NO. 18 OF 2026

Mohammad Ahmed R Khan ...Applicant
Versus
Subhash Munniram Pasi and Anr. ...Respondents

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Mr. Raghav Dharmadhikari a/w. Mr. Rajesh Tiwari i/b. Mr. Jitendra Yadav for Applicant.
None for Respondent No.1.
Mr. Sameer Mangaonkar, APP for Respondent No.2/State.

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CORAM : M.M. SATHAYE, J.
DATE : 15th OCTOBER, 2026

P.C. :

1. Heard learned counsel for the Applicant, who was complainant under Section 138 of the Negotiable Instruments Act, 1881.

2. The Applicant is seeking leave under Section 378(4) of the Code of Criminal Procedure, 1973 to file appeal against Judgment and Order dated 26.09.2025 passed by Judicial Magistrate First Class, 7th Court, Dadar, Mumbai in Case No. 1234/SS/2020.

3. Notice is issued to Respondent No.1/org. accused. According to the office note, though the Court notice is awaited, affidavit of service is filed indicating that private notice is served / delivered to Respondent No. 1 on 03.08.2026.

4. None appears for Respondent No.1.

5. Having heard learned counsel for the Applicant and on going through the impugned order, I find that the order of acquittal requires re-consideration and case for grant of leave is made out, **for following reasons**.

6. Learned Magistrate has acquitted Respondent No.1 for the reasons that no written agreement in respect of purchase of the immovable property is produced and the complainant has admitted that he was not eligible for getting a shop under SRS scheme and documentary evidence about complainant being proprietor of Humaira Fashion are not produced and there is difference in the cheque amount and amount mentioned in the demand notice.

7. At the outset, attention of the Court is drawn to consent-terms singed by the parties dated 04.05.2022 & 09.09.2023 indicating that Respondent No.1/accused had issued certain cheques/pay orders/demand draft for settling dispute. It is submitted that pursuant to first consent terms, the cheques were issued which also got dishonoured.

8. Admittedly the cheques in question are issued in favour of Humaira Fashion and the complaint is filed by the Applicant claiming to be proprietor of the said concern. Learned counsel for the Applicant has relied upon the judgment of **Shankar Finance and Investments Vs. State of Andhra Pradesh and Ors. (2008) 8 SCC 536** in support of his contention that a proprietary concern is not the legal entity distinct from the Applicant who is the proprietor and therefore, the reason given by the Magistrate about non production of

documents of the proprietary, could not have been held as fatal to the Complainant. This judgment supports the Applicant.

9. Learned counsel for the Applicant has also relied upon the judgment of Hon'ble Supreme Court in **K.R. Indira Vs. Dr. G. Adinarayana (2003) 8 SCC 300** in support of his contention that if in demand notice, any other sum is indicated, in addition to the amount covered by the cheque, that would not invalidate the notice. In paragraph 9 of the said judgment, the said argument is clearly supported.

10. Attention of the Court is also invited to the copy of the demand notice, which indicates that amount of dishonoured cheques was specifically mentioned as Rs. 15,75,000/- and in addition, amounts of legal charges of Rs. 5,000/- and separate amount of Rs. 1,00,000/- was demanded.

11. Learned Magistrate has found that necessary evidence in the form of disputed cheques and written memos issued by the bank are produced showing that cheques returned for 'insufficient funds'.

12. Learned Magistrate has held that except postal receipt Exhibit-37, the complainant has not filed documentary evidence in the form of 'postal acknowledgment' and such fact is admitted by the complainant. Perusal of the said admission shows that it is about 'postal acknowledgment'. However, it is asserted by learned counsel for the Applicant, on instructions, that the 'postal tracking report' of the demand notice was filed on record (which is produced before this Court also, at page 69) which indicates that the notice was delivered

on 04.02.2020, whereafter the complaint is filed in March 2020.

13. The defence of the Respondent No.1/accused as appearing from the impugned order, is that there was a transaction for the purchase of garments from Humaira Fashion for which cheques were issued. This case is denied by the complainant. In this respect, nothing is emerging from the impugned order as to what is the evidence led by the accused to consider the same as a probable defence.

14. For the reasons indicated above, case for grant of leave is made out. **Application is allowed.** The Applicant is permitted to file appeal against the impugned order dated 26.09.2025.

15. It is clarified that observations in this order are limited to the purpose of this application, and the appeal shall be decided on its own merits, in accordance with law.

16. **Appeal is admitted.** Action be initiated under section 390 of Code of Criminal Procedure, 1973 / Section 431 of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023.

(M.M. SATHAYE, J.)