



rrpillai

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 189 OF 2019**

RAJESHWARI
RAMESH
PILLAI

Digitally signed
by RAJESHWARI
RAMESH PILLAI
Date: 2025.12.03
11:54:02 +0530

Mangala Laxman PrabhuApplicant

vs.

Sandesh Govind Bhatte and Another ... Respondents

Mr. Juzer Udaipuri a/w. Mr. Firdaus Udaipuri for the Appellant.

Ms. Shilpa G. Talhar, APP for the Respondent - State.

CORAM : GAURI GODSE, J.

DATED : 24th NOVEMBER 2025

ORDER:

1. This application is filed under Section 378(4) of the Criminal Procedure Code by the original complainant for seeking leave to file appeal to challenge the order passed by the learned Magistrate acquitting respondent no.1 for the offences punishable under Section 138 of The Negotiable Instruments Act, 1881.

2. Learned counsel for the applicant submits that the cheques were issued by the accused towards consultation charges for the professional services provided by the complainant for setting up a resort. In a settlement letter the

original cheques were replaced and five cheques were issued towards payment of the services rendered by the complainant. To support the allegations the complainant examined herself and also produced on record the settlement letter signed on behalf of the accused. Learned counsel for the applicant therefore submits that in view of the well settled legal principles on the presumption under Section 119 and 139 of the Negotiable Instruments Act, the allegations need to be accepted as proved in the absence of any rebuttal evidence led by the accused. He therefore submits that the evidence led by the complainant would be sufficient to prove the allegations as the presumption is in favour of the complainant. He therefore submits that the applicant be granted leave to file appeal against the order of acquittal.

3. I have perused the papers of the application. The complainant's claim to receive the amount from the accused is based on a settlement letter signed by one Uday Prabhu who was the power of attorney holder of the accused. The complainant has admitted the suggestions put forth in the cross-examination that the dishonored cheques were lying in

the custody of Uday Prabhu who was a relative of the complainant. The complainant has not examined Uday Prabhu to controvert the defence that the cheques in the custody of Uday Prabhu were misused.

4. Thus, based on the admissions given by the complainant and in the absence of any proof that the amount was due and payable towards any services provided by the complainant as alleged, the trial court has accepted the defence as a probable one. The fact that Uday Prabhu was related to the complainant is not in dispute. Hence, non-examination of Uday Prabhu is also considered as an important aspect to hold that the allegations appeared to be doubtful. Thus, in the absence of any evidence to prove the allegations beyond reasonable doubt the trial court has acquitted respondent no.1.

5. 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 reappraisal 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.

6. The Application is rejected.

(GAURI GODSE, J.)