2025:BHC-AS:49482



MJ Jadhav

# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
## CRIMINAL APPELLATE JURISDICTION
## APPLICATION FOR LEAVE TO APPEAL (PVT.) NO. 239 OF 2019

Nagesh Fovkar … Applicant

Vs.

Manjunath R. Kamat And Anr. … Respondents

Mr. Omar Khaiyam Shaikh a/w Manohar Shelar for the Applicant.
Mr. D. J. Haldankar, APP for the State.



**CORAM : GAURI GODSE, J.**

**DATED : 11th 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 an appeal against the order of the learned Magistrate acquitting respondent no.1 for the offence punishable under Section 138 of the Negotiable Instruments Act.

2. Learned counsel for the applicant submits that the complainant had paid a friendly loan of Rs. 30 Lakhs, and the accused had assured repayment by executing three separate promissory notes dated 20th September 1997, 24th November 2003, and 24th November 2006. According to the complainant, the accused had also acknowledged his liability to pay Rs. 30 Lakhs

with interest at 15% per annum by issuing a letter dated 25th March 2011. For repayment of the loan amount, the accused had issued three cheques dated 28th December 2017 for Rs. 10 Lakhs each. However, the cheques were dishonoured with the remark “account closed”.

3. Learned counsel for the applicant points out that the complaint is dismissed mainly on the ground that the cheques issued towards a time-barred debt would not be a legally enforceable debt attracting a criminal liability under Section 138 of the Negotiable Instruments Act. He submits that the trial Court has relied upon a decision of a single Bench of this Court in the case of Zaheeda Kaxi Versus Sharina Ashraff Khan to hold that a cheque issued for the discharge of a time-barred debt, the accused cannot be convicted under Section 138 of the Negotiable Instruments Act.

4. Learned counsel for the applicant relies upon the decision of the division Bench of this Court in the case of ***Dinesh B. Chokshi V. Rahul Vasudeo Bhatt***[1]***.*** It is held that once a cheque drawn for discharge on a time-barred debt creates a promise which becomes an enforceable contract, it cannot be said that the cheque is drawn for discharge of a debt or a liability which is not legally enforceable. He thus submits that the division Bench of this Court has taken a

1 2012(4) Bom.C.R.(Cri.) 764

view that the cheque issued even for a time-barred claim would be for the discharge of a legally enforceable debt, attracting Section 138 of the Negotiable Instruments Act. He submits that respondent no.1 is acquitted on the ground that the dishonoured cheque cannot be held towards a legally enforceable debt, as the complainant's claim is time-barred. He therefore submits that leave to file an appeal be granted to challenge the order of acquittal.

5. I have perused the papers of the application. According to the complainant, a friendly loan was given on three different dates for Rs. 10 Lakhs each. The complainant relies upon three promissory notes of different dates, which are produced on record. According to the complaint, the accused had accepted the debt by issuing a letter dated 25th March 2011. The promissory notes are dated 20th September 1997, 24th November 2003 and 24th November 2006. The complainant contends that the promissory notes were executed for repayment of the loan amount along with interest at 18% per annum. As per the letter of acknowledgement, the accused had acknowledged repayment of Rs . 30 Lakhs with interest at 15% per annum. The complainant thereafter contends that on 14th August 2017, the accused issued three different cheques, all dated 28th September 2017, for an amount of Rs. 10 Lakhs each. Since the cheques were dishonoured, the complainant issued a demand

notice, which was replied to by the accused. The accused replied that undated cheques and an undated letter were issued towards security by the accused before 18 to 20 years. Thus, the accused denied the letter of acknowledgement and the promise to repay as contended by the complainant.

6. The complainant produced on record the promissory notes and the letter to support his contention. In the cross-examination, the complainant admitted that the dishonoured cheques were issued after the accused had closed his account. The trial Court has referred to the admissions made by the complainant during cross-examination.

7. Learned counsel for the applicant is right in submitting that the main ground to dismiss the complaint is by relying upon the decision of the single Bench of this Court holding that Section 138 of the Negotiable Instruments Act would not be attracted, if the cheque is issued for the discharge of a time-barred debt. As rightly pointed out by the learned counsel for the applicant, the division Bench of this Court has answered the reference by holding that even the cheque issued towards the time-barred claim would be enforceable, attracting Section 138 of the Negotiable Instruments Act.

8. However, in the present case, the trial Court has also

considered the admissions given by the complainant to hold that the disputed cheques were given long back and not in the year 2017. The trial Court has also considered the arguments of the accused that the MICR code was not mentioned on the disputed cheques. Thus, apart from the ground that the time-barred claim would not be enforceable for attracting Section 138 of the Negotiable Instruments Act, the trial Court has also considered the time gap between the promissory notes and the deposit of the cheques in the year 2017. The first promissory note is of 1997. The letter relied upon by the complainant to show that the debt was acknowledged is of 2011. It is also an important aspect, as considered by the trial Court, that the cheques were dishonoured with a remark that the account was closed. Hence, considering the available evidence on record and the admissions given by the complainant in the cross-examination, the trial Court has concluded that, considering all the aspects, the complainant has failed to prove his case against the accused. Thus, the trial Court held that the guilt was not proved beyond a reasonable doubt. In view of the aforesaid facts pertaining to the dates of the promissory notes, the issuance of a cheque after a long gap, the reason for the dishonour of the cheque as the account was closed, coupled with the admission of the complainant that the cheques were issued after the account was closed, raises doubts on the allegations made by the complainant.

9. Hence, 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.

10. The Application is, therefore, dismissed.

**(GAURI GODSE, J.)**