



rrpillai

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 329 OF 2019**

Jaya Vithal Malkar

....Applicant

vs.

Shashikant Shantaram Gamare
and Another

... Respondents

Mr. Mohan Rao for the Applicant.

Mr. Shailesh S. Ghag, APP for the Respondent-State.

CORAM : GAURI GODSE, J.

DATED : 6th JANUARY 2026

ORDER:

1. This application is filed under Section 378(4) of the Criminal Procedure Code (Cr.PC) by the complainant seeking leave to file an appeal to challenge the order passed by the learned Magistrate acquitting respondent from the offence punishable under Section 138 of The Negotiable Instruments Act, 1881.

2. Learned counsel for the applicant submits that the complainant had paid an amount of Rs.14,78,300/- from time to

time to the accused for purchasing a flat. Since the transaction was not complete, the accused agreed to return the amount. Accordingly, a writing was prepared and executed on stamp paper admitting receipt of the amount from the complainant. The accused agreed to return the entire amount by cheque. Accordingly, the disputed cheque dated 15th December 2014 was handed over. The cheque was returned with a remark 'payment stopped by the drawer'. Hence, demand notice was served. Since the demand notice was not complied with, the applicant filed the complaint.

3. Learned counsel for the applicant relies upon the writing executed on stamp paper to support the allegations. He also relies upon oral evidence of the complainant to support the allegations that she had paid the amount from time to time to the accused and the disputed cheque was towards return of the said amount. Hence, it was issued for a legally enforceable debt. He thus submits that there is sufficient evidence on record to prove the allegations. Hence, the complainant be granted leave to file appeal.

4. I have perused the evidence produced on record by way

of additional compilation. In the demand notice the complainant has not referred to any writing signed and executed by the accused admitting the receipt of amount and an assurance to repay the amount by cheque, The demand notice was replied by the accused by denying all the allegations. The accused denied receipt of any amount and also denied issuing any cheque to the complainant. The accused contended that there was family relationship between the parties and the cheque book and the pass book of the accused were handled by the complainant. Hence, he alleged that the complainant has misused the cheque. The complainant had examined herself to prove the allegations. In the cross-examination she has admitted receipt of certain amounts from the accused. She has admitted that she had signed a cheque for Rs. 14,00,000/- which was produced on record by the accused at Exhibit-26. This cheque is dated 30th May 2014. Similarly, another cheque dated 28th May 2014 is produced at Exhibit-27.

5. As per the complainant's allegations she had paid an amount of Rs.14,00,000/- by cheque and the remaining amount by cash in between March 2011 to September 2013. However,

the admissions given by the complainant regarding the cheques issued by her in May 2014 are not further explained by her.

6. The accused has raised a defence during cross-examination of the complainant that there were other transactions between the parties and the bank transactions of each other were conducted by them. The complainant has not examined witness who have signed the writing relied upon by her to support the allegations.

7. Considering the admission given by the complainant and the suggestions given by the accused during the cross-examination it raises serious doubt and suspicion on the allegations made by the complainant. The bank transactions brought on record by the accused are not explained by the complainant. In view of the suggestions given by the accused during the cross-examination and the admissions given by the complainant, the trial court held that the complainant failed to prove that the disputed cheque was towards any legally enforceable debt or liability.

8. 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.

9. The Application is dismissed.

(GAURI GODSE, J.)