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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 45 OF 2020
(Leave to file appeal)**

Apeksha Ramdas Kakad ... Applicant
vs.
Vijay Balasaheb Kakad and Anr ... Respondents
Mr. Sachin Gite, for the Applicant
Mr. Dinesh J. Haldankar, APP for Respondent-State.

**CORAM : GAURI GODSE, J.
DATED : 8th DECEMBER 2025**

ORDER:

1. This application is filed under Section 378(4) of the Criminal Procedure Code('CrPC') by the original complainant for leave to file an appeal to challenge the order passed by 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 accused has admitted that the cheque was issued by him. Since the issuance of the cheque was not in dispute, the presumption of Section 119 was in favour of the complainant. The complainant has produced sufficient material on record to support her contention regarding her financial capacity to make the payment to the accused

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for the financial assistance. For the amounts advanced to the accused of Rs. 11,00,000/- from 23rd September 2013 to 12th June 2013, the accused repaid Rs. 4,00,000/-. The dishonoured cheque was towards payment of the balance amount of Rs. 7,00,000/-. He therefore submits that the presumptions under Sections 119 and 139 of the Negotiable Instruments Act are in favour of the complainant. In the absence of any rebuttal evidence to prove that the cheque amount was paid, the accused would be liable to be convicted for the offence.

3. He submits that, although in defence the accused contended that he had issued a notice to the complainant not to deposit the cheque, such notice would not absolve the accused from making payment towards the cheque. Thus, in the absence of any payment of the cheque amount, the accused would be liable to be convicted for an offence. Hence, the applicant be granted leave to file an appeal.

4. I have perused the evidence. The accused has raised a defence that the complainant and her husband were conducting 'Bhishi', and the cheque given by the accused towards the security was misused by the complainant. The accused produced on record a copy of the notice issued to the complainant, intimating her not to

misuse the cheque by depositing it for encashment. During cross-examination, the complainant accepted receipt of the notice issued by the accused and its contents. In view of the admissions given by the complainant regarding the business of 'Bhishi' carried out by her husband, and the notice issued by the accused well in advance before the cheque was deposited, the trial court has accepted the defence as a probable one.

5. In view of the admissions made by the complainant that the accused had already intimated not to deposit the cheque and that her husband conducted 'Bhishi', the defence raised by the accused that the cheque issued as security was misused is a probable defence. There is insufficient evidence to establish that the dishonoured cheque was for a legally enforceable debt. Hence, sufficient doubt and suspicion are raised on the complainant's allegations. The defence is therefore rightly accepted as a probable one.

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.)