



MJ Jadhav

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
APPLICATION FOR LEAVE TO APPEAL (PVT.) NO. 82 OF 2020**

Kushal Arvind More

... Applicant

Vs.

Ashok B. Deshmukh And Anr.

... Respondents

Mr. Sarthak Solaskar i/b Prakash Solaskar for the Applicant.

Mr. A. S. Gawai, APP for the State.

CORAM : GAURI GODSE, J.

DATED : 15th OCTOBER 2025

ORDER:

1. This application is filed under Section 378(4) of Criminal Procedure Code ('Cr.P.C.') by the original complainant 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 sufficient evidence was produced by the complainant to prove his case that an amount of Rs.2 Lakh was invested by the complainant for a profit share. The accused had issued two cheques for repayment of the principal amount. Two cheques were issued for an amount of Rs.80,000/- and Rs. 1,20,000/- towards repayment of the principal

amount. However, both the cheques were dishonoured. He submits that based on the admissions given by the complainant in the cross-examination regarding receiving an amount of Rs.69,000/-, the trial Court has disbelieved the complainant's case that he had invested Rs. 2 Lakh by cash. Learned counsel for the applicant submits that the admissions given by the complainant would not be a ground to disbelieve the complainant's case as the accused had issued two cheques for a total amount of Rs. 2 Lakh. Hence, the two cheques for a total amount of Rs. 2 Lakh would support the complainant's case that he had invested an amount of Rs. 2 Lakh.

3. Learned counsel for the applicant further points out the signature on the cheque and that the issuance of cheque is not disputed by the accused. Hence, the presumption under Section 139 of the Negotiable Instruments Act that the cheque was issued for repayment of legally enforceable liability can be rebutted only by substantial evidence produced by the accused that the amount were repaid. Considering the evidence led by the accused, there is no material to show that the principal amount paid by the complainant was any time repaid. Hence, the applicant be granted leave to file an appeal to challenge the order of acquittal.

4. I have perused papers of the application. The accused has

led evidence to support his defence that considering the request of the complainant that he does not want to continue his investment in currency trading and he requested to return his invested amount of Rs.50,000/-, the accused had returned an amount of Rs.69,000/- to the complainant from May 2014 to September 2014. The accused has therefore led evidence to support his defence that only an amount of Rs. 50,000/- was due and payable against which the accused had returned an amount of Rs.69,000/-.

5. Regarding the dishonoured cheques, the accused has led evidence that the accused was kidnapped and was illegally confined and the bag containing cheque books and cash were taken away as a ransom. The accused has also referred to the particulars regarding the criminal complaint filed with regard to the said incident. The particulars of the cheque numbers with the cheque book are also stated in the evidence along with the particulars of the police complaint filed by the accused. Considering the evidence led by the accused, the trial Court has accepted the defence to be probable that the amount due and payable was Rs.50,000/- against which Rs.69,000/- was returned. Considering that there was no dispute that the amounts were invested for the purpose of trading, the view taken by the trial Court to accept the defence is rightly accepted as a probable defence.

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, therefore, dismissed.

(GAURI GODSE, J.)