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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR**

CRIMINAL APPLICATION (APPA) NO.846 OF 2016

M/s Sai Auto Agencies,
through its Partner, Dyandeo
S/o Ramdas Rane,
Aged about 46 years,
Occupation – Business,
R/o Sainagar, Amravati

..APPLICANT

VERSUS

Ashok S/o Gayadin Gupta,
Aged : Major, Occupation :
Agriculturist,
R/o Pimplod, Taluka Daryapur &
Dist. Amravati

..RESPONDENT

Mr R.N. Badhe, Advocate for applicant

CORAM : N.W. SAMBRE, J.

DATE : 23rd March, 2017

ORAL ORDER

Heard Mr Badhe, learned Counsel appearing on behalf of the applicant. For the reasons stated in the application, delay stands condoned. Criminal Application (APPA) No.846 of 2016 stands allowed.

2. Heard application on merits.

3. By the present application, the applicant – original complainant seeks special leave to appeal under Section 378 (4) of the Code of Criminal Procedure, for challenging the judgment and order dated 23rd September, 2016, passed by learned Additional Sessions Judge-3,

(2)

Amravati, in Criminal Appeal No.115 of 2012, thereby reversing the judgment and order of conviction, passed by Judicial Magistrate First Class, Amravati, on 29th June, 2012, in Summary Criminal Case No.3551 of 2008 and acquitting the respondent-accused of an offence punishable under Section 138 of the Negotiable Instruments Act.

4. Mr Badhe, learned Counsel appearing on behalf of the applicant – complainant, while taking me through the findings recorded by the learned Magistrate ordering conviction and that of the findings recorded by the learned Sessions Judge ordering acquittal, would urge that the Sessions Judge has misread the evidence of the complainant. According to him, the learned Court below has ignored the presumption under Sections 118 and 139 of the Negotiable Instruments Act. So as to substantiate his contention that Exh.23 – Usanvar Chit was admittedly executed and acknowledged by the respondent – accused he would invite attention to question no.6 in the statement of the accused recorded under Section 313 of the Code of Criminal Procedure. He would then urge that bare perusal of Exhs.23 and 24, particularly the location of signature would not take to the conclusion that the signature was obtained on a blank paper. He would also rely upon the evidence of the complainant for the said purpose. According to him, once the respondent has not come out with a defence that his signature was fabricated, presumption will hold the field. In addition, by relying upon the judgment of this Court, in the matter of **Kisan vs. Aba Bua**, reported in **(2000) 4 Mh.L.J. 855**, would urge that Section 67 of the Evidence Act does not require a strict proof, particularly for proving

(3)

the contents of Exh.23 – Usanvar Chit. As such, according to him, there is an arguable case.

5. If submissions of Mr Badhe are appreciated on merits, at the outset, it is required to be noted that Exh.23 – Usanvar Chit, which is formed to be the basis for initiation of the complaint case for an offence punishable under Section 138 of the Negotiable Instruments Act, the signature on the said chit though is acknowledged, still the contents thereof are not proved. If the submission of Mr Badhe qua the provisions of Section 67 of the Evidence Act, particularly in the backdrop of degree of evidence required for proving said Exh.23 is appreciated, the scheme of Section 67 cannot be stretched to the extent of ordering proving of the contents of such chit by the evidence of the complainant, though the respondent – accused is claimed to have been executor of the same. Once the contents of the said chit are not proved, in my opinion, support sought to be drawn by the learned Counsel appearing on behalf of the applicant from the judgment in the matter of Kisan (supra) will hardly be of any assistance.

6. Apart from above, while re-appreciating the evidence, the appellate court has considered demeanour of the applicant – complainant. Although it is brought on record that the applicant had purchased a second hand truck from the respondent, yet the applicant has shown ignorance about the same. The alleged loan transaction, coupled with the fact of purchase of the truck by the applicant was not established in clear terms by adducing details of the transaction qua the price of the truck, the loan availed from

(4)

the bank, loan as hand loan given to the respondent, etc. In the aforesaid background, once the applicant has failed to establish that the cheque was issued for legally enforceable debt, in my opinion, presumption under Sections 118 and 139 of the Negotiable Instruments Act would shift on the accused.

7. In view thereof, the acquittal ordered by the learned Sessions Judge appears to be just and proper. No case for grant of leave to appeal is made out. Leave refused. Criminal Application stands rejected.

(N.W. SAMBRE, J.)

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