IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR, NAGPUR.
...

CRIMINAL APPLICATION (APL) NO. 454/2020

Vinod S/o Babarao Dafe
Aged 47 years, occu: cultivation
R/o Rajura Bazar, Taluka Warud
Dist.Amravati. .. **APPLICANT**

v e r s u s

Rajkumar Manikrao Gulhane
Aged 55 years, occu: cultivation
R/o Ashti, Tah.Ashti
Dist.Wardha. .. **NON-APPLICANT**

....
Mr. Rajnish Vyas, Adv. for applicant
Mr.P.M.Gaikwad, Adv. for respondent
....

CORAM: MRS.SWAPNA JOSHI, J.
DATED: 16th October, 2020

ORAL JUDGMENT:

1. ***Admit.*** Heard finally with the consent of learned counsel appearing on behalf of respective parties.

2. The present Application has been filed under Section 482 of the Code of Criminal Procedure (Cr.P.C.) by the applicant/accused, challenging the order dated 6.7.2020 in Summary Cri.Case No. 207/2018 passed by learned Judicial Magistrate, First Class, Ashti Dist.

Wardha as well as the order dated 19.8.2020 passed by learned Sessions Judge, Wardha in Criminal Revision No.13/2020.

3. The non-applicant/ original complainant had filed the complaint under Section 138 of the Negotiable Instruments Act, alleging that the accused had demanded an amount of Rs. 4 lakhs towards hand-loan and that the complainant had handed over the said amount to the accused. Accordingly, the accused has issued a cheque of Rs. 4 lakhs in favour of complainant. However on presentation of the cheque, it was dishonoured for the reason of "insufficient funds". After following the due procedure, the complaint was filed by the complainant. In the said complaint after recording the evidence of the complainant, statement of the accused was recorded u/s 313 of the Cr.P.C. and thereafter the present applicant/accused has filed an application for issuing summons to the Branch Manager, Bank of India, Branch Ashti, calling him along with the records. However the said application (Exh.99) was rejected by the learned JMFC, Ashti, vide his order dated 6.7.2020.

4. The Revision preferred against the said order was dismissed by learned Sessions Judge, Wardha, vide his order dated 19.8.2020, on the ground that that the said witness was not a relevant witness. The learned Sessions Judge, Wardha also opined that applicant/ accused was trying to protract the trial.

5. Mr. Rajnish Vyas, learned Advocate contended that the matter being a summons case, the provisions u/s 254(2) were applicable to the case and as per the said provisions, the right of the applicant should have been protected. It is submitted that the right to fair trial has been denied to him by the learned JMFC; so also his right is not considered by the learned Sessions Judge. It is submitted that the provisions under Section 311 Cr.P.C. are wrongly applied by the Courts below and the applicant was denied the opportunity to examine the relevant witness. It is submitted that since beginning, it is the specific case of the applicant that the complainant was not in a financial condition to advance such a huge loan to the applicant and, therefore, there was no question of advancing any loan to the applicant. It is further submitted that there was no amount lying in the bank account and, therefore, there was no question of advancing any loan to the accused. It is further submitted that even the receipt which was allegedly issued by the accused does not bear his handwriting. Moreover, the Handwriting Expert's report also supports the contention of the accused. In the backdrop of the above-referred facts and circumstances, it is submitted that it was essential for the accused to examine the bank witness, in order to prove the financial condition of the applicant/ accused.

6. Mr. P.M. Gaikwad, learned Advocate for the non-applicant vehemently opposed the Application. However, he agreed on the point that it is a summons case and the provisions under Section 254 of the Cr.P.C. are applicable to the present case, whereby the accused has to be given opportunity to examine the witnesses in support of his case. Be that as it may; but the fact in issue is that whether the said witness is relevant or not. Significantly, the witness cited by the accused is relevant for the just decision of the case, as it is his categorical case that the complainant is not in a financial condition to advance a loan and, therefore, he needs to bring the financial condition of the complainant on record. In that case, the applicant must be given an opportunity to substantiate his stand. Since the accused is challenging the financial capacity of the complainant, the Bank personnel would be a relevant witness for a just decision of the case. Hence the impugned orders need to be set aside and the applicant be given an opportunity to examine the Bank witness in his defence.

7. Hence, the order :-

<u>ORDER</u>

i) Criminal Application No. 454/2020 is allowed.

ii) The impugned orders dated 6.7.2020 passed by learned JMFC Ashti and dated 19.8.2020 passed by learned

Sessions Judge Wardha, are set aside.

iii) The applicant/accused be permitted to examine the Bank witness as sought by him in his Application (Exh.99) filed before the learned Judicial Magistrate, First Class, Ashti, Dist.Wardha.

JUDGE

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