

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO FILE APPEAL

BY PRIVATE PARTY NO. 10 OF 2022

Ramchandra Jagdev Mule

Age : 64 yrs, occ : agri

R/o Tondar, Taluka Udgir,

District Latur

Applicant

Versus

1. The State of Maharashtra
Through Police Inspector,
Udgir City Police Station,
District Latur.

2. Vishnuprasad Sarada
Age : 50 yrs, occ : business
R/o AUSA Road, Kherdekar Stop,
Near State Bank of India, Latur

Respondent

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Mr. Sk. Kayyum Najir, Advocate for the applicant.

Mrs. D.S. Jape, A.P.P. for respondent No.1.

Mr. P.P. More, Advocate for respondent No.2.

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CORAM : SANDIPKUMAR C. MORE, J.

Dated : 7th September 2023

Order :

1. The applicant, who is the original complainant in S.T.C. No.544/2017, is seeking leave to file appeal against judgment and order dated 13.12.2021 in the aforesaid case passed by the learned Judicial Magistrate (First Class), Udgir, District latur, whereby respondent No.2 has been acquitted from the offence punishable under Section 138 of the

Negotiable Instruments Act (for short, "N.I. Act").

2. Learned Counsel for the applicant/complainant submits that the learned trial Court has wrongly acquitted respondent No.2/accused by ignoring the fact that the applicant/complainant is having source of income from his agricultural land and that his son was also serving in Army and he used to send him money. He pointed out that once issuance of cheque in dispute and signature thereon is admitted by respondent No.2, then there was no need for the applicant to establish that the cheque in dispute was issued for any legally recoverable debt.

3. On the contrary, learned Counsel for respondent No.2/accused strongly opposed the submissions made on behalf of the applicant. He pointed out that though the respondent No. 2 took defence that the cheque in dispute was misused by the applicant and that it was not issued in respect of any hand loan, but indirectly he has admitted his signature on the cheque. Moreover, though it is observed by the learned trial Court that it was established that the said cheque was dishonoured, but from the vital admissions given by the applicant and his witness in their cross-examination, the presumption under Section 139 of N.I. Act has stood

rebutted. As such, he prayed for rejection of the application.

4. Heard rival submissions. Also perused the entire documents on record alongwith the impugned judgment and evidence.

5. It is significant to note that the trial Court has acquitted the respondent No.2/accused mainly on two grounds viz; (1) that the complainant could not establish the fact that the disputed cheque was issued by respondent No.2 out of any legal liability towards the applicant and (2) the applicant could not prove his capacity to lend the amount of cheque to respondent No.2 as a hand loan.

6. It is the case of the applicant/complainant that due to acquaintance, he gave an amount of Rs. 2,00,000/- in cash to respondent No.2/accused for his business of grocery shop as hand loan which was to be repaid within three months from the month of February. Further, according to him, respondent No.2, in the month of May, issued the disputed cheque for refund of the said amount of hand loan, which was dishonoured. It is significant to note that when signature on the cheque in dispute is admitted by the accused, then the complainant need not to prove the fact that

the said cheque was issued for discharge of legally recoverable debt. However, from the language of Section 139 of N.I. Act, it is evident that the aforesaid presumption is rebuttable one. Moreover, the Hon'ble Apex Court has also made it clear that for rebutting such presumption the accused need not to enter into witness box for leading evidence to that effect, but for that purpose the evidence brought by the complainant and material on record can also be used.

7. In the instant case, the applicant has given vital admissions in his cross-examination. On perusal of the same, it appears that his agricultural land is his only source of income and he gets income of Rs. 1,00,000/- per year from the said agricultural land excluding the expenses. According to him, he is having 5 Acres land namely Gut No. 126 and Gut No.96. However, the area of the aforesaid gut numbers appears to be around 3 Acres. Moreover, though the applicant has stated in his cross-examination that his son who was in the Army sends him money, but no documentary evidence to that effect has been produced on record. He has also admitted that due to financial problem, he sold his residential house. Further, he has admitted that he raised the amount of Rs. 2,00,000/- which was to be given to

respondent No.2, by executing one notarized document in respect of agricultural land. However, no such agreement has been produced on record by him. Moreover, he also stated in his cross-examination that after receipt of an amount of Rs. 2,00,000/-, the accused had executed one bond which was in handwriting of the accused. However, only blank bond paper has been produced on record by him. It is most important to note that the applicant had stated before the Court that he gave the amount of hand loan to respondent No.2 in form of currency notes of denomination of Rs.100 and Rs.500 in the month of February 2017 in presence of Shivraj Borole and Dilip Biradar. Though this Shivraj Borole has been examined by the applicant as his witness, but he, in contradiction to the statement of the applicant, stated in his cross-examination that the applicant had given amount to the accused in form of currency notes of denomination of Rs.1000, Rs.500 and Rs.100. It is extremely important to note that there was demonetization in the month of November 2016 whereby the currency notes of the denomination of Rs.1000 were removed from circulation. Thus, the version of applicant is completely falsified by his own witness. Moreover, the bond produced by the applicant/complainant which was purchased by respondent No.2, is blank and nothing has

been written on it. Moreover, the applicant could not tell as to who wrote the disputed cheque (Exh.21) despite having received it from respondent No.2/accused.

8. All the aforesaid vital admissions clearly indicate that the applicant could not establish the fact that the accused had issued cheque in dispute out of legal liability. Moreover, he also failed in proving his capacity to lend such big amount of Rs. 2,00,000/- to respondent No.2. The learned trial Court, by considering all these facts, has acquitted the respondent No.2. Therefore, no case is made out by the applicant for granting leave to file appeal. As such, the application stands dismissed.

(SANDIPKUMAR C. MORE, J.)