

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT PARTY
NO. 17 OF 2023

Shri Renukamata Multistate
Co-Operative Urban Credit Society Ltd.
Ahmednagar, Through its General Manager
Harishchandra Ambadas More,
Age : 47 year, Occ. : Service,
R/o. : Renukabhavan, Pipeline Road,
Ekvira Chowk,
Tq. and Dist. Ahmednagar

... **Applicant/Appellant**
(Ori. Complainant)

VERSUS

Manojkumar Rameshlal Gandhi,
Age : 41 years, Occ. : Business,
R/o. : Shahartakli, Tq. Shevgaon,
Ahmednagar

... **Respondent**
(Ori. Accused)

...

Mr. A.T. Kanawade – Advocate for Applicant
Mr. V.B. Munot – Advocate for Respondent

....

CORAM : SANDIPKUMAR C. MORE, J.

DATE : 30th August, 2023

ORDER :

1. The applicant i.e. original complainant is seeking leave to challenge the judgment and order dated 7th May, 2018 passed by the learned Judicial Magistrate, First Class (Court No.1),

Ahmednagar in S.S.C. No. 157 of 2012, which resulted into acquittal of present respondent i.e. original accused from the charge punishable under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as "*the N.I. Act*" for short).

2. Learned Counsel for applicant – Co-Operative Credit Society submits that, though the Trial Court has answered point Nos.1, 3 and 4 in respect of proving the fact that cheque in dispute was issued for discharge legally enforceable debt and that it was dishonored for the reason "Funds Insufficient" and that complainant issued statutory notice within required period, in the affirmative but dismissed the complaint only for want of authorisation of the person who had filed it. In support of his submissions, he relied on following judgments :

(a) *Haryana State Co-Operative Supply and Marketing Federation Limited Vs. Jayam Textiles and Anr., reported in (2014) 4 SCC 704*

(b) *Bhupesh Rathod Vs. Dayashankar Prasad Chaurasia and Anr., reported in (2022) 2 SCC 355*

3. On the contrary, learned Counsel for the respondent i.e. original accused made reference to the cross-examination of the complainant, wherein the complainant has given evasive answers

whereby he admitted that, he did not file any document whereby accused had admitted for the payment of cheque amount and that he was not having any personal knowledge of the matter and also that, he did not verify whether the signature on Exhibit – 61 was of accused – respondent. With these contentions it is submitted by the learned Counsel for respondent – accused that, the complainant could not establish the fact which is main ingredient of Section 138 of the N.I. Act that the cheque in dispute was given for discharge of legally recoverable debt.

4. Heard rival submissions and also perused the documents on record. Admittedly, on going through the impugned judgment it appears that, the learned Trial Court has given affirmative findings that cheque was given by the respondent to the complainant – Co-operative Credit Society for discharge of legally enforceable debt. Moreover, the learned Trial Court has also given affirmative findings that, the said disputed cheque was dishonored for insufficiency of funds and that the complainant had issued required statutory notice for demanding the cheque amount. It appears that, the case of complainant – Co-operative Credit Society has been dismissed by the learned Trial Court only on the ground

that, the complainant was not having proper authority to lodge the complaint. On going through the judgment itself it is evident that, the learned Trial Court has observed that the authorised person, who led the evidence on behalf of the complainant – Co-operative Credit Society did not produce the copy of Power of Attorney given to him by the Board of Directors. Moreover, he also could not file any other document of authorisation which enabled him to lodge the complaint, such as resolution of Board of Directors. Thus, the complaint appears to be dismissed only for want of proper authorisation by the complainant – Co-operative Credit Society.

5. In the case of **Haryana State Co-Operative Supply and Marketing Federation Ltd.**, (*supra*) the Hon'ble Apex Court has observed that, the complaint under Section 138 of N.I. Act cannot be dismissed solely on the ground that, the authorisation of person who signed the complaint on behalf of the complainant – Company was not filed and proved. It has been further observed that the procedural defects and irregularities, which are curable, should not be allowed to defeat substantive rights or to cause injustice. Procedure, a handmaiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any

oppressive or punitive use. With these observations, Hon'ble Apex Court was of the opinion that, an opportunity ought to have been given appellant – Company to place document containing authorisation on record and prove in accordance with the law. In the said case, the Hon'ble Apex Court had remanded the matter back to the Trial Court by setting aside the judgments of appellate Courts for conducting the trial afresh.

6. Further, Hon'ble Apex Court in the case of **Bhupesh Rathod** (*supra*) has also observed as follows :

“If a complaint was made in the name of Company, it is necessary that a natural person represents such juristic person in the court of the court looks upon the natural person for all practical purposes. It is in this context that the body corporate is regarded as a de jure complainant while the human being is a de facto complainant to represent the former in the court proceedings. Thus, no Magistrate could insist that the particular person whose statement was taken on oath alone can continue to represent the Company till the end of the proceedings. Not only that, even if there was initially no authority the Company can at any stage rectify that defect by sending a competent person.”

7. Thus, in view of the aforesaid observations of Hon'ble Apex

Court, I am of the opinion that the applicant – complainant has made out arguable case, which requires consideration in the appeal. Though the learned Counsel for respondent has argued that, the learned Trial Court did not record correct finding on the other points on the aspect of cheque in dispute being issued for discharge of legally recoverable debts which have been subsequently dishonored but it appears that, the applicant's complaint has been dismissed only on the sole ground of proper authorisation and, therefore, the observations of Hon'ble Apex Court in aforesaid cases squarely apply. In view of the same, the application stands allowed and the appeal of the applicant be registered after removal of office objections, if any.

8. The application is accordingly disposed of.

[SANDIPKUMAR C. MORE]
JUDGE