

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PRIVATE PARTY NO. 35
OF 2019

Nilesh s/o Khusalrao Chavan

Applicant

Versus

Danayand s/o Ramesh Gorade

Respondent

Mr. Y. B. Bolkar, Advocate for the applicant.

CORAM : R. M. JOSHI, J.

DATE : 21st JUNE, 2023.

PER COURT :

1. Heard.
2. It is the contention of learned counsel for the applicant/original complainant that the Trial Court has committed error in not considering the presumption under Sections 118 and 139 of Negotiable Instruments Act. It is contended that accused has not lead any evidence in order to rebut the said presumption.
3. Perusal of the complaint shows that there is no averment made therein in respect of previous transactions/partnership between them. However, cross-examination of complainant shows

that the complainant and accused were partners in the partnership firm. He further admits that in 2014, partnership business was closed and handed over to accused. The account of said enterprise was in Allahabad bank and he was partner of same earlier. He was unable to state whether the account in Allahabad bank was there in 2011 or not. Though it is claimed by him that there was dissolution of partnership firm but in the next breath, it is stated that his investment is still in the business now conducted by accused. It is stated that accused was liable to pay him sum of Rs. 4,98,000/-. Apart from this, further cross-examination of the complainant reveals that he has not maintained any record in respect of giving handloan of Rs. 3,20,000/- to the accused. He further accepts that said amount was not withdrawn from bank. It is also admitted that he has no evidence other than cheque to show that this amount was lent to accused.

4. In the light of these facts, learned Trial Court has observed that when the accused was liable to pay amount of Rs. 4,98,000/-, it does not stand to any reason that the complainant had advanced loan of Rs. 3,20,000/- to him. Furthermore, there is no

evidence on record to establish case of the complainant about advancement of loan.

5. For the purpose of rebuttal of presumption, it is not necessary that accused shall examine himself or adduce evidence of any witness. The same can be done by cross-examining the complainant and in this case, the accused has succeeded in doing so.

6. The contention of learned counsel for the applicant that independent witness is examined in order to prove the said transaction, cannot be accepted because there is no averment in the complaint that said transaction has even taken place in presence of any witness.

7. Learned counsel for the applicant, in support of his submissions, has placed reliance on following judgments :-

- i) T. Vasanthakumar vs. Vijayakumari
2016(2) Mh.L.J. (Cri.) 152
- ii) Mainuddin Abdul Sattar Shiakh vs. Vijay D. Salvi
2016(2) Mh.L.J. (Cri.)(S.C.) 329
- iii) Kaushalya Devi Massand vs. Roopkishore
AIR 2011 Supreme Court 2566

- iv) M/s Mandvi Co-op. Bank Ltd. vs. Nimesh B. Thakore
AIR 2010 Supreme Court 1402
- v) Shivaji s/o Kishanrao Chinchane vs. Jagdish s/o Rajeshwarrao
Choudhary,
2016(4) Mh.L.J. 262

Considering different facts of the case in hand than the judgments relied, the law laid down in the aforesaid judgments is not applicable to the present case.

8. In the result, application stands dismissed.

(R. M. JOSHI)
Judge

dyb