

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

**APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO.53 OF
2022**

Hitendra s/o Vinayakrao Upadhayay
Age : 62 years, Occu.: Agriculture
R/o.: Sahakar Nagar, Parbhani,
Ta. & Dist.: Parbhani

.... APPLICANT
(Orig. Complainant)

VERSUS

Shankar s/o Rajaram Gaud,
Age : 58 years, Occu.: Business,
R/o.: Om Niwara Complex, "Niwara"
Nivara Housing Society, Takli Naka,
Near Cement House, Kopargaon,
Taluka Kopargaon, Dist. Ahmednagar ...

RESPONDENT
(Orig. Accused)

....
Advocate for the Applicant : Mr. S. S. Jadhavar
Advocate for the Respondent : Mr. A. H. Kasliwal
....

**CORAM : SANDIPKUMAR C. MORE, J.
DATED : 11/09/2023.**

P. C. :

1. The applicant / original complainant in SCC No.930 of 2017, is seeking leave to file an appeal challenging the acquittal of respondent / accused from the charge under Section 138 of Negotiable Instruments Act in the aforesaid case under judgment and order dated 03/03/2022 passed by the learned Judicial Magistrate First Class, Parbhani (hereinafter referred to as 'the learned trial court').

2. The learned counsel for the applicant / complainant submits that the learned trial court has erred in acquitting the accused despite there being documentary evidence on record in form of agreement between the parties, wherein the respondent / accused had admitted his liability to pay an amount of Rs.25,00,000/- to the applicant / complainant in a transaction of transfer of license of country liquor shop. The learned counsel for the applicant / complainant submits that dishonour of the aforesaid cheques is proved and respondent / accused also did not dispute his signatures on the disputed cheques and therefore, the learned trial court should have convicted the respondent / accused.

3. On the contrary, the learned counsel for the respondent / accused strongly opposed the submissions and claimed that under the provisions of Maharashtra Prohibition Act, there was no provision for selling the license of country liquor shop by one person to other person. He pointed out that the agreement for such transfer of license and sale of goodwill in respect of the said business is itself void contract as per the provisions of Contract Act, as it is clearly mentioned therein that no contract can be made, which is forbidden by law. According to him, the cheques issued by the respondent / accused were in respect of another transaction by way of security, wherein land of brother of the applicant / complainant was sold to wife of respondent / accused.

4. Heard rival submissions and also perused documents on record.

5. The acquittal of the respondent / accused recorded by the learned trial court, is mainly on two grounds that the cheques were not issued in discharge of legally recoverable debt since sale of goodwill of country liquor shop was not covered under it and that there cannot be any goodwill attached to the retailer shop of country liquor since there was no brand value attached to the said business as the applicant / complainant was not a manufacturer. However, it seems that the agreement between the applicant / complainant and respondent / accused is on record, under which the cheques in dispute were issued by respondent / accused. Moreover, the respondent / accused has not denied his signatures on the cheques but tried to defend the case under the story that he had issued those cheques to the applicant / complainant by way of security in sale transaction of land by brother of the applicant / complainant to his wife.

6. Though the learned trial court has discussed at length as to how the sale of country liquor license is barred under the provisions of Maharashtra Prohibition Act, but the fact cannot be ignored that the country liquor license, which was in the name of firm of applicant / complainant and his partners, has been transferred to the name of respondent / accused by lawful authority and as per the rules after making necessary enquiry. Further, the disputed cheques appear to be given for goodwill of the said shop. Though it is held by the learned trial court that no such goodwill is attached to the sale of country liquor shop under the license, but in view of the existence of contract between the applicant / complainant and respondent / accused about the

same, these facts need fresh consideration. Moreover, the respondent / accused has set up a defence that the cheques were given to the applicant / complainant in respect of sale transaction of land of brother of the applicant / complainant in the name of his wife. However, the copy of the sale deed does not reflect such position that any cheque was given by the respondent / accused to that effect. Moreover, the copy of sale deed itself shows that entire amount of consideration was paid by the wife of the respondent / accused to Manish in advance. Though the respondent / accused is not under an obligation to enter into witness box to prove defence, but considering the nature of defence, the respondent / accused neither examined himself or any other other witness to show that the cheques in dispute were given by him to the applicant / complainant by way of security to the aforesaid sale transaction of land. Therefore, in respect of various provisions of law as discussed by the learned trial court for denying the consideration being legal, fresh consideration is required. In view of the same, the application for leave to appeal stands allowed and disposed of accordingly.

7. Appeal of the applicant / complainant be registered after removal of the office objections, if any.

(SANDIPKUMAR C. MORE, J.)