



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO FILE APPEAL

BY PRIVATE PARTY NO. 54 OF 2023

Idris Mohammad Rafique Bagwan,
(Proprietor of Idris Fruit Merchant),
Age : 39 yrs, occ : business
R/o Bhishti Lane, Lane No.1, Bara
Pathar, Dhule,

Applicant

Versus

Shaikh Mustkim Shaikh Mobin @
Shaikh Mobin
Age : 29 yrs, occ : business
R/o Manyar Mohalla, Songir,
Taluka and District Dhule

Respondent

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Mr. S.V. Suryawashi, Advocate for the applicant.

Mr. Sk. Samir Ahmed Saifuddin, Advocate for the respondent.

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CORAM : SANDIPKUMAR C. MORE, J.

Dated : 21st December 2023

Order :

1. The applicant, who is the original complainant, is seeking leave to challenge the acquittal of the respondent/accused in S.C.C. No. 2033/2020 under judgment and order dated 14.02.2023 passed by learned Judicial Magistrate (First Class), Dhule (hereinafter referred to as "the learned trial Court").

2. Learned Counsel for the applicant/complainant

submits that there was transaction of selling Tata truck of the applicant to the respondent / accused for a consideration of Rs. 12,00,000/- under one Sauda Pawati i.e. agreement to sale. The consideration amount was paid through two cheques of Rs. 4,50,000/- each, which were already got honoured and another post-dated cheque of Rs. 3,00,000/- was given for remaining amount. According to the learned Counsel for the applicant, the learned trial Court, despite there being a written agreement on record, wrongly presumed that there was another document of Usanwar Pawati. He pointed out that the learned trial Court in the judgment itself has observed that the document of Sauda Pawati in respect of the truck between the applicant and respondent, was not in dispute.

3. On the contrary, learned Counsel for the respondent/accused submitted that the learned trial Court has come to the conclusion that the balance amount of consideration of Rs. 3,00,000/- was already paid by the applicant to the respondent and it was also admitted by the applicant in his cross-examination. As such, he prayed for rejection of the application.

4. Heard rival submissions. Also perused the documents on record. On going through the record and proceedings, it appears that there was an agreement between the applicant and respondent in respect of sale of truck wherein the cheque in dispute was clearly mentioned alongwith it's amount and cheque number. It is important to note that the learned trial Court has also observed in the judgment itself that the said agreement is not disputed by the respondent/accused. The judgment shows that the learned trial Court has referred one Usanwar Pawati which is not at all in existence. The only document i.e. Sauda Pawati at Exh. 30 is not disputed in respect of the transaction between the parties. As such, the observation of the learned trial Court in respect of Usanwar Pawati *prima facie* appears erroneous.

5. The learned Counsel for the respondent tried to argue that the date of disputed cheque is 18.08.2020 but in the said agreement at Exh.30 it is mentioned as 02.11.2019. Therefore, he pointed out that the said cheque was time barred when it was presented.

Though the date of cheque in the agreement is mentioned as 02.11.2019, but the cheque at Exh.25 on record does not indicate any overwriting in respect of it's date.

Further, the date of Sauda Pawati appears to be of 02.08.2019 and therefore, obviously the cheque in dispute was a post-dated cheque. There is no defence of the accused i.e. the present respondent on record that the date on the disputed cheque was subsequently altered. Moreover, the learned trial Court has observed that the cheque in dispute was not issued for legally enforceable liability. However, this observation has mainly come on record since the learned trial Court found that the applicant in his cross-examination admitted that he received the amount of cheque from the respondent/accused. On going through the entire cross-examination of the applicant, there is no such admission on record by the applicant about the defence of respondent that he already paid the amount of cheque to the applicant. On the contrary, it appears that the applicant had denied the suggestion when he was asked that the respondent had already paid the amount of cheque to him. Thus, such type of inference drawn by the learned trial Court that the applicant admitted the receipt of payment of cheque amount, is absolutely erroneous. Thus, the applicant has made out an arguable case, and therefore, leave to challenge the impugned judgment needs to be granted. In view of the same, the application stands allowed. The appeal of the applicant be registered after

removal of office objections, if any. The application is accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)