IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO.80 OF 2022

Santoshi Mata Urban Co-operative
Credit Society, Bhusawal,
Through : Prashan Laxman Bharambe,
Age : 34 years, Occu.: Service,
R/o.: New Area Ward, Bhusawal,
Taluka : Bhusawal, District : Jalgaon ... APPLICANT
(Orig. Complainant)

VERSUS

Ravindra Bhagwat Jawle,
Age : 45 years, Occu.: Business,
R/o.: Gurudev Traders,
Bhusawal Road, Faizpur,
Taluka Yawal, District : Jalgaon ... RESPONDENT
(Orig. Accused)

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Advocate for the Applicant : Mr. K. B. Jadhav
Advocate for Respondent : Mr. R. S. Shinde

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CORAM : SANDIPKUMAR C. MORE, J.
DATED : 18/10/2023.

P. C. :

1. The applicant / original complainant, which is Co-operative Credit Society, is seeking leave to file a criminal appeal challenging the judgment and order dated 02/05/2022 in SCC No.2452 of 2004 passed by Judicial Magistrate First Class, Court No.1,

Bhusawal (hereinafter referred to as 'the learned trial court'), whereby the present respondent / accused has been acquitted.

2. The case of the applicant / complainant is that the respondent / accused had obtained loan of Rs.3 lakhs from the complainant / society and towards the part payment of said loan, issued a cheque No.64338, dated 25/09/2004 for Rs.3 lakhs. However, the said cheque was dishonoured and therefore, the applicant / complainant had to file the aforesaid case under Section 138 of the Negotiable Instruments Act.

3. The learned counsel for the applicant-society strongly submits that the issuance of the cheque and signature thereof, have been admitted by the respondent / accused. Moreover, it is also not in dispute that the said cheque got dishonoured and the respondent / accused did not reply statutory notice. He further pointed out that the respondents / accused had in fact admitted that he and his wife had taken loan from the complainant / society and therefore, the finding of lower court that the complain - society could not establish the fact that the cheque was issued in respect of legally enforceable liability is definitely perverse.

4. On the contrary, the learned counsel for the respondent / accused vehemently opposed the submissions made on behalf of the applicant / complainant - society and supported the acquittal of the respondents at the hands of the learned trial court. He pointed out that the learned trial court has given proper findings as to how the complainant - society failed to establish that the cheque in dispute was issued for legally enforceable liability.

5. Heard rival submissions. Also perused documents on record alongwith impugned judgment and order.

6. Admittedly, the issuance of the cheque and signature thereof, are not disputed by the respondent / accused. It is settled that when the issuance of the cheque and signature thereof are not in dispute, then presumption under Section 139 of the N. I. Act gets activated and then complainant need not to establish the fact that the cheque in dispute was issued for discharging legally recoverable debt. However, such presumption is rebuttable and it is also settled that the respondent / accused need not to enter into witness box for leading evidence in rebuttal, but he can establish

his defence from the material on record and admissions given by the complainant and his witnesses in their cross-examination.

7. Thus, the evidence on record needs to be scrutinized. The defence of the respondent / accused is that the complainant - Credit Society failed to establish the fact that the amount of disputed cheque was legally recoverable from him. It is significant to note that to establish the fact that the said cheque was issued for legally recoverable debt, the complainant - society has not filed on record any document such as loan demand application, bond of debenture, mortgage deed or extract of loan account of the respondent / accused. It is to be noted here that if complainant - Credit Society shows that there was legally recoverable debt in existence at the time of issuance of cheque, then only it will succeed. In the instant case, though the respondent / accused did not reply the statutory demand notice issued by the complainant - Credit Society, but there is no document from the complainant - society showing that there was an outstanding of the cheque amount or more than that towards the respondent / accused on the date of issuance of the cheque.

8. Moreover, the learned trial court appears to be relied upon judgment of this court in the case of ***The Karad Urban Co-operative Bank Ltd. vs. Sunil Laxman Dalvi and others, 2016 All MR (Cri) 363***, wherein it is observed that mere statement that accused had issued the cheques for repayment of loan is not sufficient for convicting him or for raising the presumption under Section 139 of the N. I. Act without giving any particulars of the loan. In the instant case also no details of loan are coming forward from the complainant - society in respect of the loan taken by the respondent / accused. The learned trial court also considered various loan accounts of the respondent / accused and his wife but observed that the accused had repaid amount near about Rs.2 crores to the complainant - society and there is no documentary evidence on record to show what was the outstanding towards the accused at the time of issuance of the disputed cheque.

9. Further, it is significant to note that Registrar of the Co-operative Societies has also issued a certificate of recovery against the accused under Section 101 of the concerned Act and therefore, without producing any satisfactory evidence regarding the outstanding from the respondent / accused it cannot be said that the amount of disputed cheque was legally recoverable debt. The

complainant - society is having every remedy to recover the outstanding from the respondent / accused by filing execution in respect of the recovery certificate. However, in absence of any details of loan amount, the presumption under Section 139 of the N. I. Act will not come to the help of the complainant - society. Thus, it appears that the learned trial court has rightly considered all these aspects and acquitted the respondent / accused by giving proper findings. Therefore, I am not inclined to grant leave as sought by the complainant - society and the application stands dismissed.

(SANDIPKUMAR C. MORE, J.)

VS Maind/-