



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO.03 OF 2024

Shri Swami Samarth Automobiles
Through Subhash Bhukan Sawale
Age- 60 years, Occu- Business & agri.,
R/o Shikshak Colony, Taloda Road,
Nandurbar Dist Nandurbar

... Applicant.

(Orig. Complainant)

Versus

Dharma Mangu Kokani,
Age- 67 years, Occu- Agri.,
R/o- Kholghar Post- Sutare,
Tq- Nawapur, Dist- Nandurbar

... Respondent.

(Orig. Accused)

...
Mr. B. R. Waramaa, Advocate for Applicant.

...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 09th JANUARY, 2024

PRONOUNCED ON : 12th JANUARY, 2024

ORDER :

1. Original complainant, who had instituted proceedings under section 138 of Negotiable Instruments Act, 1881, is dissatisfied by dismissal of said complaint bearing Summary Trial Case No. 145 of 2018 and so he seeking leave to assail the same.

2. It is submitted that, summary trial case was filed as a result of dishonour of cheque issued by respondent - original

accused towards the payment of purchase of tractor and anchor. That, complainant had on dishonour of cheque issued legal notice which was served upon accused, but he failed to pay cheque amount within stipulated period, and therefore, complaint was instituted with all necessary documents. It is further pointed out that, in spite of all ingredients to attract the offence under section 138 of N.I. Act being made out and in spite of trial court getting convinced about availability of cheque carrying signature of accused, ought to have applied provisions under sections 118 and 139 of N.I. Act, dismissed the complaint on flimsy ground about accused to be not knowing *English*, but signature being caused in *Marathi*. Defence of misuse of cheque is also accepted by trial Judge without any foundation, and therefore, there being good case on merits in appeal, he prays for grant of leave.

3. In view of above submission, this Court has gone through the papers placed on record. Complaint under section 138 of N.I. Act seems to have been instituted on behalf of Swami Samarth Automobiles accusing dishonour of cheque issued towards purchase of tractor and anchor by the accused. Cheque seems to have been returned by the bank on the ground of funds insufficient, and therefore, above action was taken. However, before learned trial Court, there was no authorization to file complaint and it has

so emerged during very cross of complainant. Though it was claimed that, complainant is a partnership and registered firm, no documents in support of the same were put on record.

4. On the contrary, complainant was unable to give date of purchase of tractor and anchor by accused. Specific defence of accused is misuse of cheque even by way of security. Such defence has not been refuted by complainant, it has been confirmed by the complainant while under cross.

5. Further, complainant had admitted that, accused did not understand English language, but the RPAD (Exh.34) carried signature in English, whereas cheque in question was said to be carried signature in Marathi. It also transpires that, complainant in cross has admitted that, record of article sold on borrowing, cheques were obtained by way of security purpose. Delivery challan (Exh.35) is also found to be doubtful by the trial Court as there is no signature over it and therefore very transaction of sale of anchor comes under shadow of doubt.

Consequently, evidence of complainant is rendered doubtful on various counts, and therefore, learned trial Court has held that, it is doubtful whether the cheque in question was towards the discharge of a legally enforceable debt.

6. In the light of above discussion, with such quality of evidence, *prima facie*, there does not seem to be a good ground to be agitated in appeal, and therefore, no fruitful purpose would be served by granting leave. Hence, I proceed to pass following order :

ORDER

- (i) The application is hereby dismissed.

(ABHAY S. WAGHWASE, J.)