



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO.14 OF 2023

Mhasai Mata Mahila Gramin
Co-operative Patpedhi, Nizampur Jaitane,
Through Manager,
Shri Nilesh Ramdas Jaiswal,
Age : 43 years, Occ. : Service,
R/o. Nizampur, Tq. Sakri, Dist. Dhule.

... Applicant

Versus

Devbai Dattu Sarak,
Age : 49 years, Occu. : Business,
R/o. Mahir, Tq. Sakri,
Dist. Dhule.

... Respondent

...
Mr. Vitthal Dighe, Advocate for Applicant.
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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 15th FEBRUARY, 2024

PRONOUNCED ON : 21st FEBRUARY, 2024

ORDER :

1. Complainant is a registered co-operative financial institution intends to question the judgment and order of acquittal passed by learned Judicial Magistrate First Class, Sakri dated 12.12.2022 in Summary Trial Case No. 576 of 2017 for offence punishable under section 138 of Negotiable Instruments Act, 1988, hence the leave application.

2. It is submitted that, proceedings under section 138 of

N.I. Act instituted against respondent, who had borrowed loan of Rs.1,00,000/-. That, complainant society charged interest on the said loan. That, accused issued cheque towards repayment of the borrowed loan, but it was dishonoured and therefore, after notice on failure to pay cheque amount, proceedings under section 138 of N.I. Act were instituted. It is pointed out that, all necessary ingredients for attracting charges under section 138 of N.I. Act were available. There was no denial of issuance of cheque or signature over it. However, learned trial Court has acquitted the applicant, holding that, cheque was not shown to be issued towards legally enforceable debt. According to learned counsel, learned trial court was not expected to deal on the aspect of penal interest. However, such aspects are also taken into account and discussed while acquitting the accused. Learned counsel placed on record copy of statement of account (Exh.51). According to him, except denial no independent case has been set up by accused.

3. In spite of notice of this court dated 15.02.2023 to be made returnable on 08.03.2023 and service report showing notice being served upon respondent, since 29.03.2023, none has appeared from respondent side. Regularly thereafter matter appeared on board, but on request of applicant matter was adjourned. Specific order was passed by this court on 25.01.2024

that arguments of learned counsel for applicant was heard and matter was kept part heard to be dealt in afternoon session, but in afternoon session also, none appeared for respondent and therefore matter was adjourned by way of last chance and kept on 15.02.2024. On 15.02.2024, matter was called out in both session, but none appeared for respondent. Therefore, matter is taken up for hearing on merits.

4. Taking the above submissions into consideration, when there is no denial of issuance of cheque or signature over it and practically no evidence from accused side in the trial court, case is made out to be dealt in appeal. Hence, leave as prayed deserves to be granted, I proceed to pass the following order :-

ORDER

- (i) Application stands allowed.
- (ii) Leave is granted to file Appeal.
- (iii) Registry to register the Appeal.
- (iv) Appeal stands **admitted**.
- (v) Call record and proceedings.

(ABHAY S. WAGHWASE, J.)