



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO. 19 OF 2019

M/s. H. P. Sundarwadi Highway Cen.
Gut No.41/1, Aurangabad – Jalna,
Highway at Po. Sundarwadi,
District Aurangabad through its
Proprietor Sow. Nayana Vithalrao Shinde,
Age : 47 years, Occu. : Business and
Household, Resident of Plot No. 1067
Sai Nagar, N-6, Cidco, Aurangabad

... Applicant
(Orig. Complainant)

Versus

Kacharu Chaganrao Ghodke,
Age : 48 years, Occu. : Business,
R/o. Om Rajhans Tours & Travels,
Samtanagar, Saintsheel Mata Mandir,
Aurangabad.

... Respondent
(Orig. Accused)

...
Mr. Suresh P. Pandav, Advocate for Applicant.
Mr. Deepak S. Manorkar, Advodate for Respondent.
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 21st MARCH, 2024

PRONOUNCED ON : 3rd APRIL, 2024

ORDER :

1. Original complainant, who instituted proceedings under section 138 of Negotiable Instruments Act against respondent accused is desirous of challenging the judgment and order of acquittal passed by learned Judicial Magistrate First Class, (16th Court), Aurangabad dated 11.12.2018 in S.C.C. No. 8700 of 2015.

2. According to learned counsel for applicant, complainant is running a fuel pump. Accused, who is involved Tours and Travels, use to take fuel on credit. After amount of Rs 8,57,000/- and some odd amount accumulated to his credit, on insistence he finally issued two cheques of Rs.2,14,461/- and Rs.6,43,372/-, respectively, but the same were dishonoured and therefore proceedings under section 138 of N.I. Act were instituted. It is further submitted that, complainant has made out full-proof case by adducing cogent and reliable evidence. That, there is no denial of issuance of cheque or signature over it. However, learned trial court has acquitted the accused on the sole ground that bank memo to be not bearing sign or seal. On such technical ground, acquittal is granted. Hyper technical approach has been adopted by learned trial court, and therefore, complainant, who has a good case, is seeking leave to file appeal.

3. In answer to above, learned counsel for respondent accused submitted that, learned trial court has correctly dismissed the compliant and has acquitted the accused as offence itself was not made out. That, invoking section 146 of N.I. Act, acquittal has been recorded. Therefore, he prays to refuse leave, there being no merits in the application.

4. Heard. Perused the papers. Case set up by complainant is that, accused used to obtain fuel for his vehicles on credit. Towards repayment of the same, he issued two cheques (Exhs.14 and 15), but the same were dishonoured. Hence the proceedings.

5. Defence set up by accused is that, there was no legally enforceable debt and therefore no cheques were issued. He also denied the receipt of legal notice.

6. It appears that, complainant has adduced evidence of herself, placed cheques in question on record, legal notice and postal acknowledgment. Accused has also adduced evidence of himself as well as one Firojkhan (AW2).

7. As pointed out, cross of complainant goes to show that, she has admitted that, affairs of the petrol pump are looked after by Manager and she has no personal knowledge. She also seems to have failed to place on record documents of alleged transaction of fuel on credit. Even cheque memo is not got exhibited in the trial court. Here, the bank memo placed on record does not bear seal of the bank and precisely for the said reason, learned trial court seems to have invoked section 146 of N.I. Act. Therefore, there is

fundamental defence in the very bank memo conveying dishonour. Consequently, when section 146 of N.I. Act mandates seal of the bank, it being not available here, vital documents has not been proved, and therefore, no fault can be found in the impugned order. No good case being made out for grant of leave, hence the order :

ORDER

The application stands rejected.

(ABHAY S. WAGHWASE, J.)