

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO. 23 OF 2019

Manohar S/o. Gorakh Mali,
Age : 35 years, Occu. : Agriculture,
R/o. Varvade Shirpur,
Tq. Shirpur, Dist. Dhule.

... Applicant.
(Orig. Complainant)

Versus

Vijay S/o. Bhagchand Bafna,
Age : 40 years, Occu. : Agri & Business,
R/o. Shrikrushna Colony, Near
Madhavvrundh Kendra,
Tal Shirpur, Dist. Dhule.

... Respondent.
(Orig. Accused)

...
Mr. Chaitanya C. Deshpande, Advocate for Applicant.
Mr. V. P. Raje, Advocate for Respondent.
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 07 MARCH 2024

PRONOUNCED ON : 12 MARCH 2024

ORDER :

1. Original complainant, who instituted proceedings under section 138 of Negotiable Instruments Act, 1881 bearing S.T.C. No. 215 of 2013, is dissatisfied by the judgment and order of acquittal passed by learned Judicial Magistrate First Class (Court No.3), Shirpur dated 10.03.2017, has preferred instant application seeking leave to file appeal.

2. It is pointed out that, there was long acquaintance

between complainant and accused. Because of financial need of accused, complainant extended hand loan of Rs.14,00,000/- i.e. to enable him for conducting real estate business. Towards repayment of said hand loan, accused issued cheque, but on its presentation it was dishonoured and hence, proceedings were instituted. It is further pointed out that apart from examining himself, complainant is examined independent witness and documentary evidence. That, all essential ingredients for attracting section 138 of N.I. Act were available, but still learned trial court acquitted the accused on the ground that, there is no proof of hand loan. That, false defence taken by accused was also readily accepted. There being improper appreciation by the learned trial Judge, he submits that, the same is sought to be challenged. Hence, he seeks leave.

3. Resisting the above leave, learned counsel for accused would point out that, apart from failure to prove own income to extend huge loan, complainant also failed to prove alleged loan transaction by adducing any cogent evidence. He pointed out that, there was transaction with father and not complainant. There was never any hand loan from complainant. Complainant failed to make out the case and that the learned trial Court committed no error in acquitting the accused and he prays to refuse the leave.

4. Proceedings under section 138 of N.I. Act bearing S.T.C. No. 215 of 2013 seems to be instituted alleging borrowing hand loan of Rs.14,00,000/- and issuing cheque towards repayment, but it getting dishonored and in spite of statutory notice, cheque amount was not paid.

5. Prima facie, defence raised by learned trial Court seems to be that cheque issued was not towards any loan repayment with complainant, but it was regarding transaction with father of the complainant, wherein cheque was issued by way of security i.e. in transaction entered with father regarding agricultural land. Financial capacity of complainant is also questioned to extend such huge loan.

6. Learned trial court seems to have discarded the defence that, disputed cheque was given as a security to the father of complainant and has recorded a concrete finding that disputed cheque was issued by accused only in favour of complainant. However, questioning the source of income of complainant, learned trial court has held that complainant failed to show that, at that point of time, he had required funds for advancing such huge loan to accused. Recording findings that evidence of complainant is falling short regarding his financial capacity, complaint seems to have been dismissed.

7. Therefore, taking above discussion into consideration, in view of mere financial capacity of complainant and his only source to be his salary, prima facie trial court seems to have acquitted the accused. Hence, as there is a good case on merits during appeal, leave as prayed deserves to be granted. Accordingly, 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.)