



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY  
NO. 24 OF 2019**

Narayansa Venkoba Damam  
Partnership Firm, Through its Partner,  
Narayansa Venkobasa Damam  
Age : 80 years, Occu. : Business,  
Through G.P.A.  
Shivraj Rajendra Damam,  
Age : 35 years, Occu. : Business,  
R/o. Behind Kala Mandir,  
Nanded, Tq. & Dist. Nanded

....Applicant  
(Orig. Complainant)

Versus

Durga Marketing Market Yard,  
New Mondha,  
Through Its Proprietor,  
Ganesh Amreshwar Swami,  
Age : 35 years, Occu. : Business,  
R/o. Market Yard, New Mondha,  
Nanded, Dist. Nanded

.....Respondent

.....  
Mr. V. D. Patnurkar, Advocate for Applicant  
Mr. Suraj R. Bagal h/f. Mr. Bharat. N. Gadegaonkar, Advocate  
for Respondent

.....

**CORAM : ABHAY S. WAGHWASE, J.  
RESERVED ON : 07<sup>th</sup> MARCH, 2024  
PRONOUNCED ON : 22<sup>nd</sup> MARCH, 2024**

**ORDER :**

1. Acquittal of respondent from offence punishable under Section 138 of the Negotiable Instruments Act is sought to be challenged by filing appeal and hence, instant leave.

2. Learned Counsel for the applicant would point out that complainant is a Partnership Firm, which is dealing in sale of steel and construction material. Respondent accused had purchased steel worth of Rs.1,79,300/-. Bill to that extent was drawn. Between 30.11.2009 to 07.04.2010, accused repaid Rs.1,15,000/- to the complainant. Towards balance repayment of Rs.64,300/-, he issued cheque, but it was dishonoured. In spite of notice, when demand was made, he failed to repay. It is further pointed out that issuance of cheque and signature over it have not been disputed. Transaction also is not disputed. In spite of making out a full-proof case, it is submitted that there is acquittal of accused on the sole ground that complaint is time barred.

3. According to learned counsel, findings of learned trial Court are against law, more particularly, when learned trial Court has, out of five points determined by it, answered four points in affirmative including legally enforceable debt and dishonour of cheque. There is a good case in appeal and hence, he prays for leave. He placed reliance on judgment of this High Court in the case of *Adarsh Gramin Sahakari Patsanstha*

*Maryadit, Wadi v. Dattu Ramdasji Paithankar, 2010 (O) Cri. Law Journal, 1971.*

4. In answer to above, learned counsel for respondent accused pointed out that firstly, time bar complaint was filed, secondly, though business relations are not disputed, according to him, complaint is not valid. Some communications of 2009 was put to use in 2011. It was a clear fabrication and hence, learned trial Court acquitted accused and so he prays to refuse the leave to file appeal.

5. Complaint seems to be dismissed on two grounds. Firstly, complaint to be time barred and secondly for want of authority to file complaint.

6. Proceedings under section 138 of N.I. Act seems to be instituted on the premise that, complainant supplied steel to the accused worth Rs.1,79,300/-. Accused repaid Rs.1,15,000/-. Towards remaining amount of Rs.64,300/-, he issued cheque, but it was dishonoured. Therefore, legal notice was issued and on failure to pay cheque amount, proceedings under section 138 of N.I. Act were launched.

7. On going through the record and papers, it seems that, cheque in question was dated 03.01.2011, seems to be presented for realization on 05.01.2011 and bank intimation seems to be of 23.05.2011. However, it is emerging that, there are two communications from the side of complainant i.e. Exh.59 as well as Exh.35. According to complainant, Exh.59 was not legal notice, but a mere communication and in fact statutory notice is at Exh.35. Postal acknowledgment is also placed on record.

8. On carefully going through Exh.59, it is abundantly clear that accused is put to notice that cheque of Rs.64,300/- drawn on Nanded Merchants Co-operative Bank Ltd. was presented for realization and the same is dishonoured, further requested accused to deposit the cheque amount within three days, failing which criminal case would be filed in the court of law. There is clear admission that communication Exh.59 issued to accused. Postal acknowledgment shows that accused has received the same on 10.01.2011. Taking such dates into consideration, cause of action apparently arose on 25.01.2011. However, proceedings under section 138 of N.I. Act were instituted on 13.07.2011. Consequently, complaint is time barred.

8. Similarly, though on behalf of complaint one Mr. Narayansa s/o Venkobasa Damam is shown to be authorized, the authority letter is apparently of 01.10.2009. Admittedly, complaint is filed in 2011. This further weakens to the complainant's case. No doubt, proceedings under section 138 of N.I. Act requires strict compliance of all technicalities. Perused the citation relied by learned Advocate Shri Patnurkar, it is regarding settled legal position of which there is no dispute.

Consequently, there is no case made out for grant of leave. So, I proceed to pass the following order :-

**ORDER**

The application is hereby rejected.

**( ABHAY S. WAGHWASE )**  
**JUDGE**

*Tandale/-*