IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO. 32 OF 2019

Kapoorchand Kotecha Urban
Co-op. Credit Society Ltd., Bhusawal,
Through Ravindra Prabhakar Joshi,
Age : 51 years, Occu. : Working as,
R/o. Balaji Lane, Bhusawal,
Tq. Bhusawal, District : Jalgaon. **... Applicant.**
(Orig. Complainant)

Versus

1. Prabhakar Eknath Chaudhary,
Age : 60 years, Occu. : Business,
R/o. Shanti Nagar,
Opp. Peoples Colony, Bhusawal,
Tq. Bhusawal, Dist. Jalgaon. (Orig.Accused).

2. The State of Maharashtra (Formal Party)
... Respondents.

...

Mr. Tapan K. Sant, Advocate for Applicant
Mr. S. B. Yawalkar, Advocate for Respondent No.1

...

CORAM : ABHAY S. WAGHWASE, J.
RESERVED ON : 15th APRIL, 2024
PRONOUNCED ON : 19th APRIL, 2024

ORDER :

1. Here is an application for leave to question the judgment and order of acquittal for offence punishable under section 138 of Negotiable Instruments Act, 1881 passed by learned Judicial Magistrate First Class, Bhusawal in Summary Criminal Case No. 432 of 2008 dated 27.02.2018.

2. In support of relief, learned counsel for applicant submitted that, applicant, who is original complainant is a registered Co-operative Society. They are in the business of extending loan to the needy. That, accused has taken loan from the complainant society. He was irregular in repayment. Finally, cheque was issued towards repayment of loan installments, but the said cheque was dishonoured, and therefore, proceedings under section 138 of N.I. Act were instituted. It is pointed out that, all necessary ingredients for attracting section 138 of N.I. Act were made out. There was admission by accused regarding issuing cheque and there is no denial of signature over it. Still defence of accused has been accepted by learned trial Judge, thereby overlooking the other evidence adduced by complainant. Learned counsel invited attention of this court to paragraph Nos. 12, 15, 17 and 22 of the Judgment and would submit that, simpliciter stand was taken that cheque was towards security and was misused. He pointed out that, however issuance of cheque and signature over it is not denied or disputed. According to him, there is improper appreciation and conclusion is erroneous, and hence, he prays to grant leave to question the judgment and order of acquittal.

3. In answer to above, learned counsel for accused pointed out that complainant failed to make out the case. Legally

enforceable debt has not been demonstrated or established by adducing any evidence. Loan extracts are also not placed on record by complainant. General and omnibus allegations are made in the complaint without specifying details, and therefore, learned trial court rightly acquitted the accused and he prays to refuse the leave.

4. Perused the papers, more particularly the complaint bearing S.C.C. No. 432 of 2018, it transpires that, complainant is a Co-operative society registered under the Maharashtra Co-operative Societies Act. Complaint is filed through one Ravindra Prabhakar Joshi. On close scrutiny of complaint, it transpires that, in the very complaint, how much loan was applied for and how much was sanction is not reflected. Mere cheque numbers, date of notice and name of the bank is supplied in the complaint. For what purpose loan was borrowed is not getting clear.

5. Moreover, learned counsel for respondent accused pointed out that, complainant could not demonstrate exact loan, exact dues and exact repayments by producing any loan extract. It appears that, in para 15 of the judgment, learned trial court has reproduced the answers given by CW1 Ravindra Joshi, while facing cross that he could not clarify whether account extract is filed to

show exact dues to the tune of Rs.22,38,000/-, which is claimed by complainant in the compliant. Even when and what kind of loan was applied for is not satisfactory answered by this witness. He is also unable to state exact dues towards the accused. He seems to have admitted that, there are three loans due towards accused. With such admission, it is seen that, there are multiple loans and therefore it was imperative for complainant to specify as to which of the loan dues to the tune of Rs.22,00,000/- and odd amount an accumulated and exact extract reflecting above amount to be due was expected to be got proved by complainant, but he has apparently failed to do so.

6. On the contrary, by examining defence witness at Exh.69, account extract of accused is placed on record, wherein cheque numbers and amounts are reflected towards repayment.

7. According to learned counsel for applicant, borrowing of loan, issuing of cheque and signature over it, is not denied or disputed. He pointed out that, even learned trial court has drawn initial presumption. The only question that needs to be gone into whether at the time of issuing cheque in question, there was in existence any legally enforceable debt.

8. However, in the light of above discussion, the question of legally enforceable debt and liability at the end of accused itself has not been satisfactorily demonstrated and substantiated. Unless legally enforceable debt is proved, accused need not be called upon to contest the case. Hence, *ex facie* complainant's case is fragile and weak and for above reasons, no good ground being made out for grant of leave, this court proceeds to pass the following order :-

ORDER

The application is hereby rejected.

(ABHAY S. WAGHWASE, J.)

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