



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO. 41 OF 2019

Raje Shivaji Gramin Bigarsheti
Sahakari Path Sanstha Marayadit,
Kanhur Pathar, Tq. Parner,
Dist. Ahmednagar.
Through Recovery Clerk,
Shri Rangnath Dhondibhau Mandilkar,
Age : 32 years, Occu. : Service,
R/o. Kanhur Pathar, Tq. Parner,
Dist. Ahmednagar.

... Applicant
(Orig. Complainant)

Versus

1. Vasant Govind Shinde,
Firm Nath Krishi Seva Kendra,
Age Major, Occ. Business,
R/o. Pimpri Pathar, Tq. Parner,
Dist. Ahmednagar.
Firm Address Kanhur Pathar,
Tq. Parner, Dist. Ahmednagar.

... Orig. Accused

2. The State of Maharashtra

... Respondents

...
Mr. Rajendra K. Temkar, Advocate for Applicant.
Mr. Abhijit G. Choudhari, Advocate for Respondent No.1.
Mrs. Chaitali Chaudhari - Kutti, APP for Respondent - State.
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 22nd APRIL, 2024

PRONOUNCED ON : 26th APRIL, 2024

ORDER :

1. Original complainant, who instituted proceedings under section 138 of Negotiable Instruments Act against respondent no.1 herein, is intending to question the judgment and order of acquittal passed by learned Judicial Magistrate First

Class, Parner, Dist. Ahmednagar in S.C.C. No. 68 of 2006 and hence, instant leave application.

2. Learned counsel for applicant would submit that, complainant is a registered Patsanstha under the Maharashtra Co-operative Societies Act, 1960. Accused is a member of the complainant society and is also a borrower. It is pointed out that, complainant society has disbursed total loan of Rs.1,75,000/- to the accused. Accused issued cheque for the repayment of the same, but the said cheque was dishonoured and hence the above proceedings.

3. Learned counsel pointed out that, all ingredients for attracting section 138 of N.I. Act proceedings were made out. There was no denial of issuance of cheque or signature over it, but still learned trial court has acquitted the accused on the sole ground that legally enforceable debt has not been established. He pointed out that Exh.44 statement of loan extract was also supplied, but the same has not been considered and appreciated. Alleging improper appreciation, he prays to grant leave to prefer appeal.

4. On the other hand, learned counsel for respondent no.1

accused pointed out that, no doubt, complainant is a society and accused had borrowed loan, but according to him, there are several loan transactions between the parties. It is pointed out that, current outstanding has not been substantiated. Towards which of the loan, liability was enforceable, has also not been specified. Specific defence is that, cheque given by way of security has been misused.

5. In the light of above submissions, perused the papers. S.C.C. No. 68 of 2006 was instituted on 25.01.2006 alleging commission of offence under section 138 of N.I. Act. Perused the judgment. There is no denial that complainant society is involved in lending loan and accused is a borrower being one of its member. According to complainant, total outstanding at the end of accused was Rs.1,75,000/-, but cheque presentation for realization alleged to be issued by accused is of amount of Rs.3,30,895/-. Learned counsel strenuously submitted that, loan extract statement (Exh.44) has been placed on record, but the same has not been considered and appreciated. Learned trial court has seems to have held that, exact amount due is not substantiated. In para 12 of the judgment, it has been observed that, complainant has not filed any statement of account to ascertain the exact due amount of loan transaction, but in para 7 of the judgment, one come across

account extract (Exh.44) being referred by virtue of clause (f). Learned counsel for applicant has placed on record certified copy of Exh.44 before this court. Therefore, prima facie, learned trial court seems to have lost sight of Exh.44 and has passed order of acquittal.

6. In the light of above discussion, there does exist a ground for filing appeal. Consequently leave is required to be granted. Hence 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.)