IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PRIVATE PARTY NO. 43 OF 2019

M/s. Vinod Agencies, New Mondha, Majalgaon Through: Prop. Vinodkumar, Rambilasji Jaju, Age-51 years, Occu-Business, R/o. Shivaji Nagar, Majalgaon, Dist. Beed ...**APPLICANT**

VERSUS

Sayyed Yusuf Sayyed Mehmood, Age-55 years, Occu-Business, R/o. Abouse tailer shop of Sajed, Behind Chatrapati School, Sanmitra Colony, Majalgaon, Tq. Majalgaon, Dist. Beed ...**RESPONDENTS**

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Mr. Mahesh Kale, Advocate h/f Mr. Sharad S. Solanke, Advocate for the appellant
Mr. A. A. Khande, Advocate for the respondent

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 13.02.2024
Pronounced on : 21.02.2024

ORDER :

1. Applicant original complainant who had instituted proceeding under Section 138 of the Negotiable Instruments Act [N.I. Act] against the present respondent bearing S.C.C. No. 686 of 2016 is aggrieved by the judgment and order of acquittal dated 18-12-2018 passed by the learned JMFC, Majalgaon and hence he seeks leave to prefer appeal against the judgment and order of acquittal.

2. Learned counsel for original complainant/applicant pointed out that complainant is conducting business of selling plywood, laminate, hardware products. He runs an agency by name M/s. Vinod Agencies. It is pointed out that accused is his customer who had purchased material worth of Rs.11,13,300/- on credit on 25-05-2006. He assured to repay within two days. However, he failed and therefore, only on insistence and hot persuasion, accused issued cheque drawn on his bank i.e. Rajashri Shahu Urban Co-operative Bank, Majalgaon. However, on its presentation it was returned dishonored and therefore, legal notice was issued. Learned counsel for the applicant pointed out that said notice was received by accused and as such he was expected to repay the cheque amount within fifteen days. But he failed and therefore, complainant was constrained to initiate proceeding under N. I. Act.

3. Learned counsel for the applicant pointed out that transaction has been proved. There is no denial of issuance of cheque or signature over it. Therefore, there was strong presumption in favour of the complainant. However, trial court has acquitted the accused only on the ground that some sales tax documents were not placed regarding said transaction. He pointed out that complainant had

placed on record income tax returns but still same has not been considered and appreciated properly. Therefore, judgment being erroneous, complainant intends to prefer an appeal, hence, he seeks leave.

4. In answer to above, learned counsel for the accused/respondent pointed out that considering nature of proceedings, complainant was expected to establish transaction as well as legal enforceable debt. According to learned counsel for the respondent, he failed on both counts. There is no document in support of so called sale. Sales tax documents are also not placed on record to establish his case. Learned counsel for the respondent pointed out that in fact there was *Bhisi* between complainant and accused. In the said transaction, as a security, his blank cheque was in possession of the complainant. No amount was ever quoted on it and same was misused. It is pointed that such stand has been taken and even conveyed by legal notice. Therefore, he pointed out that complainant could not establish sale or purchase of goods worth of Rs.11,13,300/-. He further pointed out that even original receipt is found to be in possession of complainant which in fact ought to have been in possession of respondent accused. For above reasons, he

submits that learned trial court has correctly dismissed the complaint and so he prays to refuse leave.

5. After considering submissions and on going through the papers, judgment and order it transpires that present applicant had filed SCC No. 686/2016 by invoking proceeding under section 138 of the N.I. Act setting up the case that he is proprietor of M/s. Vinod Agencies and used to sale plywood, lamination, hardware products. His specific case is that, on 25-05-2016 accused purchased goods worth of Rs.11,13,300/- and towards its repayment, on demand cheque was issued but it was dishonored and therefore, after legal notice when amount was not paid, instant proceedings were instituted.

6. Record shows that in support of his case, complainant had adduced evidence of himself at Exh.17 and had sought reliance on documents like cheque in question, bank memo, copy of legal notice, postal receipt, postal acknowledgment, bill at Exh.29 and income tax returns for the year 2016 to 2017.

7. It is also emerging that accused, in support of his defense, has also adduced testimony of three witnesses. Specific defence raised is that cheque put to use was merely a security in some *Bhisi* between accused and complainant. Second defence is that no documentary evidence is placed to show alleged transaction dated 25.05.2016.

8. Perused the judgment. Learned trial Judge seems to have dismissed the complaint accepting the defence holding that presumption has been rebutted.

9. *Prima facie* it appears that cheque and signature is not questioned. Complainant seems to have placed on record Exhibit 29 as well as had placed income tax returns. Learned trial Judge seems to have discussed about so called *Bhisi* transaction and the evidence of witnesses adduced in support of it. In the considered opinion of this court, the so called *Bhisi* between accused and complainant has no legal sanctity. When signature is not disputed, in the light of availability of income tax returns, mere failure to place sales tax documents, could itself be sufficient to doubt the transaction of buying goods on credit, needs to be dealt in detail and that could be done only at the time of full fledged appeal.

10. In the light of above discussion, there is a debatable issue which could be dealt only in appeal. Arguable point being raised, leave as prayed deserved to be granted. Hence, I proceed to pass the following order.

ORDER

I. The application is allowed in terms of prayer clause (A).

II. The application is accordingly disposed off.

[ABHAY S. WAGHWASE, J.]

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