



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

**APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY
NO. 26 OF 2024**

Shri Suhas Dattatraya Wani
Age: 55 years, Occupation: Business,
Resident of : 38, Vishal Nagar,
Malegaon Road, Dhule,
Taluka and District Dhule.

....Applicant
(Org. Complainant)

Versus

Shri Sharad B. Pawar
Age: 42 years, Occu.: Agriculture & Business,
Resident of : Chinchwe, Taluka Dewala,
District : Nashik.

.....Respondent
(Org. Accused)

.....
Advocate for Applicant : Mr. Mukul S. Kulkarni
Advocate for Respondent : Mr. Kachru Ananda Ingle

...

CORAM : ABHAY S. WAGHWASE, J.

**RESERVED ON : 15 APRIL, 2024
PRONOUNCED ON : 18 APRIL, 2024**

ORDER :

1. Original complainant, who instituted proceedings under Section 138 of the Negotiable Instruments Act (NI Act) against present respondent, is seeking leave to file appeal, getting dissatisfied by judgment and order of acquittal passed by learned Judicial Magistrate, First Class (Court No.1), Dhule in S.C.C. No. 1556 of 2018.

2. According to learned Counsel for the applicant above summary criminal case was instituted as accused - respondent had entered into an agreement to render services in land acquisition proceedings. That a copy of said agreement was placed on record in trial Court. It is pointed out that accused has agreed to pay 25% of the enhanced consideration. Towards said agreement, accused paid Rs.6,37,000/- to the complainant and for remaining amount of Rs.50,000/-, he issued cheque in question, but the same got dishonoured and therefore, proceeding under Section 138 of the NI Act was instituted. It is further submitted that there was clear legally enforceable debt at the end of accused. He had admittedly issued cheque towards the said debt. It is pointed out that neither cheque nor signature over it is disputed. That moreover accused failed to appear in the proceedings to contest or to lead evidence, but still according to him, learned trial Court has held that there was no legally enforceable debt. That such findings are erroneous and contrary to law. Therefore, complainant intends to prefer appeal.

3. He would further strenuously submit that, even learned trial Court by directing complainant to return amount with interest within stipulated period and with further direction that respondent accused

is at liberty to initiate criminal proceedings for cheating was beyond jurisdiction and purview of trial Court, more particularly, in the light of nature of proceedings under consideration. Therefore, learned trial Court has gone overboard. For the more reason, there is a good ground to prefer appeal and hence, he prays to allow the leave application.

4. In answer to above, learned Counsel for respondent - original accused would submit that, at the threshold, complainant failed to establish any legally enforceable transaction or legally enforceable debt. He pointed out that learned trial Court has done elaborate discussion both on requirement of law as well as facts. That there was no evidence on behalf of complainant that he was authorized even to provide any services and rather it was not demonstrated that the services were legally permissible or valid in the eyes of law. Consequently, he questions the merits of instant application.

5. After considering the submissions of both sides and on going through the papers, it is emerging that S.C.C. No.1556 of 2018 was instituted by present applicant against present respondent alleging commission of offence under Section 138 of the NI Act. The gist of

complaint is that out of friendly relations and long acquaintance, on account of acquisition of complainant's land for expansion of National Highway No.3 by the Government authorities, accused was engaged by complainant to seek enhanced compensation. According to complainant, by virtue of agreement exh.27, to which both complainant and accused are signatories, it was decided and agreed amongst them that out of amount of enhanced compensation, accused would pay Rs.6,87,000/- i.e. 25% of the enhanced consideration. It is a specific case of complainant that accused paid Rs.6,37,000/-, but for remaining amount of Rs.50,000/-, he issued cheque, but on its presentation, it was dishonoured, hence the above proceedings.

6. The issue in trial Court that primarily arose was whether so called agreement and transaction followed thereupon was itself legally valid or not. Learned trial Court interpreted the provisions of Section 138 of the NI Act and seems to have held that there was no legal contract and moreover, accused had no authority to get enhanced amount of compensation on acquisition of land by Government.

7. As pointed out, after dismissing the complaint and acquitting the accused, learned trial Court seems to have directed complainant, vide clause (iii) of the operative part of the order to return an amount of Rs.11,37,000/- with interest within a period of three months to the accused and there are further direction that the amount would carry interest @ 10% per annum from the receipt of amount till its full realization. Operative part of the order, as pointed out, further shows that vide clause (iv), accused is given liberty to initiate criminal proceedings against complainant for cheating, if he so desires. Such directions are also taken exception to before this Court at this stage.

8. Therefore, here it transpires that there is issue as to what amounts to legally enforceable debt and whether exh.27, an agreement, between the parties has legal sanctity. Above all, the desirability of issuing directions in the order of trial Court reflected in clause (iii) and clause (iv) in a proceedings under Section 138 of the NI Act also needs to be dealt and decided. Hence, there are reasons and grounds which need full-fledge hearing in an appeal. Consequently, for above reasons, applicant succeeds, leave granted.

ORDER

- I. The application is partly allowed.
- II. Leave is granted to file Appeal.
- III. Registry to register the Appeal.
- IV. Appeal stands “**admitted**”.
- V. The effect and operation of the order passed by learned Judicial Magistrate First Class (Court No.1), Dhule in S.C.C. No.1556 of 2018 dated 12-01-2024, more particularly, clause nos.(iii) and (iv) is hereby stayed till decision of the appeal.
- VI. Call record and proceedings.

(**ABHAY S. WAGHWASE**)
JUDGE