



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

**APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY
NO. 31 OF 2022**

Vijayprasad Balaram Agrawal
Age: 65 years, Occu.: Business,
R/o. Partur, Tq.Partur, Dist.Jalna.

....Applicant
(Complainant)

Versus

Shaikh Khalek Shaikh Raheman Kureshi
Age: Major, Occu.: Business,
R/o. Kureshi Galli, Goan Partur,
Tq.Partur, Dist.Jalna.

.....Respondent

.....

Advocate for Applicant : Mr. Shaikh Mohammad Naseer A.
Advocate for Respondent : Mr. Siddharth P. Ubale

.....

CORAM : ABHAY S. WAGHWASE, J.

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

ORDER :

1. This is an application for leave to file appeal at the instance of complainant, who is aggrieved by judgment and order dated 06-01-2022 passed by learned Judicial Magistrate First Class, Partur, Dist.Jalna in S.C.C.No. 365 of 2012 thereby acquitting present respondent from offence under Section 138 of the NI Act,

2. According to learned counsel for the applicant, there was transaction of sale of land between complainant and accused. Sale deed was executed and it was placed on record of trial Court. That at the time of sale transaction, accused had not paid entire consideration, but paid merely Rs.39,00,000/- out of Rs.45,00,000/-. On demand towards remaining Rs.6,00,000/-, accused paid cash of Rs.54,938/- and for remaining amount he has issued cheque, but on its presentation, it was dishonoured and therefore, above proceedings was instituted.

3. Learned Counsel for the applicant pointed out that there was clear legally enforceable debt towards accused. There is no denial of issuance of cheque or signature over it. Therefore, essential ingredients for attracting offence under Section 138 of the NI Act are available. However, according to learned counsel, apart from acquitting accused on account of no legally enforceable debt and that complaint is not within statutory limitation, complaint has been dismissed. There is improper appreciation of evidence as well as law. Resultantly, learned Counsel submits that there is a good case in appeal on merits and hence, he seeks leave.

4. Per contra, learned Counsel for accused pointed out that there was no legal dues as claimed by complainant. That infact entire sale consideration was paid and there is recital to that extent in the very sale deed. That accused probabilized his defence by examining witness, who was party to the said transaction. Resultantly, according to him, as no case was made out to attract provisions of Section 138 of the NI Act, learned trial Court committed no error in acquitting the accused. For all above reasons, he prays to refuse leave.

5. In the light of above submissions, papers placed on record are put to scrutiny. S.C.C. No.365 of 2012 seems to be instituted alleging dishonour of cheque allegedly issued by accused towards transaction fo sale of land. Specific case of complainant is that out of total sale consideration of Rs.45,00,000/-, accused gave only Rs.39,00,000/-. Subsequently, he paid Rs.54,938/- in cash and for remaining amount of Rs.5,45,062/-, accused issued cheque, but it was dishonoured. Hence, the proceedings.

6. In trial Court, defence set up by accused is that there was no dues whatsoever at his end. That entire sale consideration has been

paid prior to the execution of sale deed. That witness to the transaction is also examined. That consequently, there being no legally enforceable debt, proceedings itself is false.

7. Learned Counsel for respondent - accused pointed out contents of sale deed. Said sale deed is marked as exh.63. There seems to be clear recital therein about receipt of Rs.45,00,000/- in cash and there is no complaint to that extent. It is pointed out that in cross-examination, complainant has admitted that he has received total consideration, which is also reflected in sale deed. Therefore, with such material on record, averments in the complaint and case of complainant that there was only payment of Rs.39,00,000/- and not entire sale transaction, itself gets hit at the bottom. That apart, complainant claims to have received Rs.54,938/- in cash, but there is no independent evidence in that regard.

8. On the contrary, DW3 Naserkhan, witness to the transaction, who is examined by accused at exh.74, is found to be lending support to the case of accused. Therefore, with such evidence on record, when complainant failed to make out a case of remaining dues or legally enforceable debt in the backdrop of alleged sale transaction,

i.e. at the time of issuance of cheque in question, case of complainant is apparently weak. With such evidence, no fruitful purpose would be served by granting leave as prayed. No good ground being made out to grant leave to file appeal, I proceed to pass following order :

ORDER

Application for Leave to Appeal by Pvt. Party No.31 of 2022 stands rejected.

(ABHAY S. WAGHWASE)
JUDGE