



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

**APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY
NO. 56 OF 2018**

Vishwkarma Nagri Sahkari Bank Ltd.
Aurangabad
Through Its Authorized Officer,
Pusaram S/o. Baburao Aute
Age: 31 years, Occu.: Service,
R/o. Ulka Nagari, Jawahar Colony Road,
Aurangabad.

....Applicant

Versus

Ashok S/o. Ananda Lokhande
Age; 40 years, Occu.: Business,
R/o. Nay Nagar, Durgamata Colony,
Plot No.79, Behind High Court,
Aurangabad.

.....Respondent

.....
Advocate for Applicant : Mr.Kamlakar J. Suryawanshi
Advocate for Respondent : Mr.Gajendra Devichand Jain
.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 06 FEBRUARY, 2024

PRONOUNCED ON : 09 FEBRUARY, 2024

ORDER :

1. Original complainant, who has filed complaint under Section 138 of the Negotiable Instruments Act (the NI Act), getting dissatisfied by the judgment and order of acquittal passed by the learned Judicial Magistrate First Class (JMFC), Court No.6,

Aurangabad in SCC No.1608 of 2012 dated 18-01-2017, is hereby seeking leave to file appeal.

2. It is pointed out that complainant is a bank. Accused respondent had obtained loan, but failed to repay it and finally issued cheque of Rs.20,000/-, but on its presentation, it was dishonoured and thereafter, inspite of receipt of legal notice, when he failed to pay the cheque amount, complaint was lodged. It is submitted that cheque has not been disputed. Signature is also not disputed. However, simplicitor defence was about cheque being given by way of security and its misuse.

3. It is further submitted that inspite of all ingredients for attracting offence being available, learned trial Judge has acquitted respondent on the sole ground that complaint is not by authorized person and there is no resolution. Learned Counsel submitted that there were authority letters and even subsequently, Liquidator came to be appointed and he has also issued letter of authority authorizing one Pusaram Awate to prosecute the matter. However, learned trial Court has acquitted the accused. There is a good case on merits in appeal and hence, he prays for leave to file appeal.

4. On the other hand, learned Counsel for respondent would submit that complainant failed to establish the case of dues. Moreover, complaint was lodged by unauthorized person and said person had no personal knowledge of said transaction and therefore, learned trial Court had rightly acquitted the accused.

5. After considering the above submissions and on going through papers and impugned judgment, *prima facie* it seems that complainant is a bank. Cheque allegedly received by way of dues dated 16-02-2012 seems to have returned dishonoured and therefore, legal notice is despatched to the accused and the same is also received by him.

6. It further emerges on scrutiny that complaint seems to have been filed by one Pusaram Baburao Awate, who adduced his evidence at exh.37 wherein he deposed that he has succeeded one Balaji Vishwanath Kasale, who infact has lodged complaint. It seems that exhibits 46 and 47 are authority letters. However, there is no resolution by bank specifically authorizing Pusaram Awate to prosecute instead of Balaji Kasale. The person Balaji Kasale, who filed complaint, had left the bank. Therefore, it is doubtful whether

Pusaram Awate had personal knowledge of transaction between bank and accused and about actual repayment and dues of loan. It being loan transaction, documents like loan application, loan agreement were expected to be proved, but Pusaram Awate was not apparently acquainted with such documents and its contents. There is apparently no distinct resolution by Board authorizing Pusaram Awate to replace Balaji Kasale and to further prosecute the accused. For said reason, learned trial Court has given benefit to the accused. Mere authority letter exhibits 46, 47 cannot be said to be proper authorization. Resultantly, no fault can be found in the impugned order. With such quality of evidence, no fruitful purpose would be served by granting leave to file appeal. Hence, no case being made out for grant of leave, application deserves to be rejected. Accordingly, I proceed to pass following order :

ORDER

Application for Leave to Appeal by Private Party No.56 of 2018 is rejected.

(ABHAY S. WAGHWASE)
JUDGE