



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO. 64 OF 2019

M/s. Dhanlakshmi Finance and
Investment Corporation, Udgir,
Through its Partner Shripat @
Babu Ramchandra Kotalwar,
Age : 55 years, Occu. : Business,
R/o. Udgir, Tal. Udgir, Dist. Latur.

... Applicant.
(Orig. Complainant)

Versus

1. Akhil Trading Company,
Through its Proprietor,
Abdul Gafar Mohammad Sarwar,
Age : 55 years, Occu. : Business,
As Commission Agent,
R/o. New Ganj, Udgir,
Tal. : Udgir, Dist. Latur.

2. Abdul Gafar Mohammad Sarwar,
Age : 55 years, Occu. : Business,
As Commission Agent,
R/o. New Ganj, Udgir,
Tal. : Udgir, Dist. Latur.

... Respondents
(Orig. Accused)

...
Mr. Anand V. Indrale Patil, Advocate for Applicant.
Mr. G. J. Kore, Advocate h/f. Mr. D. D. Sarwade (Patil), Advocate
for Respondents.
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 11th MARCH, 2024

PRONOUNCED ON : 18th APRIL, 2024

ORDER :

1. Acquittal of respondent under section 138 of
Negotiable Instruments Act (N. I. Act), is intended to be challenged

by way of appeal by the original complainant. Hence instant leave application.

2. Learned counsel for applicant pointed out that, complainant is involved in money lending business after getting registered with concerned authorities. That, accused had borrowed loan to the tune of Rs. 3,00,000/-, by accepting all necessary terms and conditions. Towards repayment of loan, cheque was issued. However, on its presentation, it was returned dishonoured, and therefore, after completing formalities of issuing legal notice, when there was failure to pay cheque amount, proceedings bearing S.C.C. No.332 of 2006 was instituted. That, all necessary ingredients for attracting section 138 of N.I. Act were available. In spite of it, learned trial court has acquitted accused on the ground that complainant failed to prove that cheque in question was issued towards loan repayment. Complainant examined himself as well as examined one witness. However, still complaint is dismissed. That, there is improper appreciation and hence complainant intends to prefer appeal and so learned counsel seeks leave.

3. On the other hand, learned counsel for accused respondent would point out that, complainant failed to establish legally enforceable debt by way of loan. Necessary details were not

provided. Accused adduced evidence of one witness i.e. Bank Manager as well as documentary evidence. That, there was no dues to the tune of the amount of cheque and it was not so established. Cheque issued by way of security was misused, and therefore, learned trial court has rightly acquitted the accused.

4. On perusal of papers and judgment, it transpires that, there is no dispute that, original complainant/applicant is involved in lending loan and accused had admitted that he borrowed business loan to the tune of Rs.3,00,000/-. Extension of loan is in the form of cheque. Complainant case is that, towards repayment of said loan, accused issued cheque, but it was dishonoured. It further transpires that, accused himself did not step into the witness box, rather he adduced the testimony of bank official.

5. There is no dispute between the parties that, loan was of cheque discount nature. There is copy of loan application on record along with promissory note at Exhs.63 and 65, respectively. Complainant's witness confirmed noting of receipt of cheque in question at Exh.57 in the register. Issuance of cheque or signature over it also is not denied by the accused. Simpliciter stand taken seems to be that, cheque was issued by way of security and the same was misused. It also transpires that, so called cheque from

accused was issued at the time of receipt of loan. However, learned trial court seems to have entertained doubt, holding that, in view of testimony of witness of complainant and loan extract (Exh.60), it has not been proved that, cheque in question was noted in the record or register. *Prima facie*, learned trial Judge seems to have held that, there is initial presumption in favour of complainant, but holding that accused has rebutted the presumption successfully, learned trial court seems to have dismissed the complainant and acquitted the accused.

6. In the considered opinion of this court, in view of above material, there is a point and ground to be contested in appeal. Therefore, prayers so raised are required to be granted. Accordingly, 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.)