IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PRIVATE PARTY NO. 70 OF 2019

Rahemankha Sulemankha Patel,
Age 64 years, Occu. Pensioner & Agri.,
R/o. Ahmed Colony, Kuchar Vata,
Juna Jalna, Taluka and District Jalna. … Applicant
[Complainant]

Versus

Krushna Pandurang Atawale,
Age 62 years, Occu. Pensioner,
R/o Ahmed Colony, Kuchar Vata,
Juna Jalna, Taluka and District Jalna. … Respondent
[Accused]

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Mr. S. S. Kalaskar, Advocate h/f Mr. Sudarshan J. Salunke, Advocate
for the Applicant.
Mr. P. P. More, Advocate for the sole Respondent.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 28.03.2024
Pronounced on : 05.04.2024

ORDER :

1. Original complainant, who had instituted proceedings under Section 138 of the Negotiable Instruments Act, 1881 [NI Act], is aggrieved by the judgment and order of acquittal passed by learned

JMFC, Court No.4, Jalna dated 05.10.2017, thereby acquitting present respondent from offence under Section 138 of the NI Act.

2. In support of relief of leave, learned counsel for the applicant/complainant briefed this Court about relations between complainant and accused respondent. The gist of the complaint is that, they being friends and neighbours, on demand of accused, complainant advanced Rs.2,51,000/- in cash by way of hand loan to accused. Towards its repayment, accused issued cheque, but on its presentation, it was dishonoured. It is pointed out that therefore, legal notice was dispatched and was duly received by accused, however, he failed to pay the cheque amount in spite of demand and therefore above proceedings were instituted.

3. Learned counsel for the applicant pointed out that hand loan transaction has not been disputed nor denied by the accused. The solitary defence taken by accused is that there was a transaction of purchase of plot. Amounts were paid to the son of complainant on various dates and only balance of Rs.56,000/- was remaining and towards it, cheque was issued. Thus, defence is of no hand loan being borrowed. According to learned counsel for the complainant, there is nothing in support of above defence. Moreover, different stands are

taken by accused in his evidence as well as while answering during statement under Section 313 of Cr.P.C. Learned trial court failed to consider that there was initial presumption in favour of complainant and that stood unrebutted. Still there is acquittal and therefore, according to learned counsel, there being no proper appreciation of evidence as well as law, he seeks leave of this Court to question the said judgment.

4. In answer to above, learned counsel for the accused took this Court through the complaint as well as cross of complainant and pointed out that complaint is full of ambiguity. That, purpose for which hand loan was obtained has not been stated by complainant. That, further, contents of the cheque are in different ink. Specific stand is that, signed blank cheque in the transaction of purchase of plot has been put to use even when there was no legal debt to the tune of Rs.2,51,000/-.

5. After considering the submissions of both sides and on going through the papers, it seems that parties are residents of one locality and neither of them deny them to be friends of one another since long. Case set up by complainant is that accused approached for hand loan to the tune of Rs.2,51,000/- and he handed case of such amount

to accused on 30.03.2016 and towards its repayment, cheque was issued and it was dishonoured. Hence the complaint.

6. Stand taken by accused in trial court is that, he had not borrowed hand loan. Secondly, there was transaction of plot between son of accused and son of complainant. Periodically payments were made. Only Rs.56,000- were remaining and therefore, towards payment of said Rs.56,000/-, signed cheque was handed over. His further defence is that, except signature, nothing is in his writing.

7. Perused the judgment under challenge. Learned trial court has doubted complainant's version on the ground that one ink is used for signature and mentioning account number, whereas remaining contents of cheque Exhibit 18, like date, name and amount in words and the word 'sif' is appearing in distinct ink, and as such, possibility of subsequent filling up cannot be ruled out. Learned trial court has also observed that complaint is silent for what purpose hand loan was obtained. Finally, holding that accused has probabilized his defence, learned trial court has acquitted the accused. However, case of the accused was that there was a transaction of purchase of plot and he had periodically made payments on 05.02.2015, 10.03.2015, 24.04.2015, 15.05.2015 and 22.05.2015 to son of complainant,

namely, Rafiq and cheque in question was towards last installment. However, except quoting figures and dates, there is no further evidence in black and white from the side of accused to demonstrate alleged transaction of purchase of plot. Issuance of cheque and signature over it is not primarily disputed. Therefore, with such material, it cannot be said that accused has probabilized his defence. Matter needs to be dealt in appeal at length. Hence, there exists ground to grant leave. 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.]

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