



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO.45 OF 2022

Arjun Haribhau Bhonde,
Age : 56 years, Occu. Agri. & Business,
R/o. Jantanagar, Galli No.5, Sangamner,
Tal. Sangamner, Dist. Ahmednagar

... Applicant

Versus

Umesh @ Gokul Sunil Gore,
Age : 49 years, Occu. : Business,
R/o. Jantanagar, Galli No.3,
Sangamner, Dist. Ahmednagar.

... Respondent
(Resp. is orig. Accused)

...
Mr. Ajay T. Kanawade, Advocate for Applicant.
Mr. N. B. Narwade, Advocate for Respondent.
...

CORAM : ABHAY S. WAGHWASE, JJ.

DATED : 04th JANUARY, 2024

ORDER :

1. Original complainant intends to question the judgment and order of learned Additional Chief Judicial Magistrate, Sangamner dated 08.03.2022 in Summary Criminal Case No. 477 of 2018 by which complaint under section 138 of Negotiable Instruments Act, 1881 (for short 'N.I. Act') filed by present applicant (original complainant) stood dismissed.

2. Learned counsel for applicant would submit that, out of

friendly relations, proposed respondent (original accused) had borrowed hand loan and the same was given by the present applicant. He had assured to pay the amount. That, when demand was made, he issued cheque, but the same was dishonoured and therefore, proceedings under section 138 of N. I. Act were initiated.

3. It is submitted that a full-proof case for attracting offence of 138 of N. I. Act were made available in the evidence before the trial Court. However, learned trial Court has not appreciated the evidence in its correct perspective and has rather dismissed the complaint and present respondent came to be acquitted. As the judgment and order is erroneous, complainant intends to prefer the appeal and hence leave is sought.

4. After considering the above submissions and on going through the impugned Judgment, it is seen that, Summary Criminal Case No. 477 of 2018 was instituted by present applicant alleging extension of friendly loan due to friendly relations. The cheque towards repayment of said debt on being submitted in the bank for realization was returned dishonored, and therefore, after notice, summary case was filed and it was tried by learned Additional Chief Judicial Magistrate, Sangamner.

5. On *prima facie* going through the papers and judgment, it is seen that, the very cheque which was put up for realization was not found to be signed by accused. There is detailed discussion to this extent in the judgment of trial court in para 11, wherein evidence of complainant and his cross as well as evidence of accused has been dealt and discussed. Further it is emerging that, there is ambiguity in the evidence of complainant as he is unable to give the date on which cheque was handed over by accused. Therefore, firstly, signature over the cheque is disputed and secondly, complainant's evidence is infirm. The details for which domestic purpose money was demanded is also not appearing in the evidence of complainant. It is also revealed that, complainant has claimed that, he raised amounts from his friends and relatives, but their details are not provided. Therefore, in the light of such circumstances, even presumption available under section 139 and 118 of Indian Evidence Act could not be drawn.

6. Learned counsel for applicant has sought reliance on following rulings:-

- (i) *Kiran Rameshlal Bhandari v. Narayan Purushottam Sarda*, 2021 All.M.R.(Cri.)63;
- (ii) *Hiten P. Dalal v. Bratindranath Banerjee*, 2001 AIR (SC) 3897
- (iii) *P. Rasiya v. Abdul Nazer & Anr.* (Cri.Appeal Nos.1233-1235 of 2022).

7. On going through the same facts in those cases and the case in hand being distinct, cannot come to the rescue of applicant.

Consequently, learned trial Court rightly held that, complainant could not prove that there was legally enforceable debt and that instrument was signed by accused. Hence, there is no infirmity in appreciation of available evidence. No case is made out on merit before this Court so as to grant relief as prayed. Hence, application stands dismissed.

(ABHAY S. WAGHWASE, J.)