



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO. 51 OF 2022

Kamlakar Anant Samant,
Age : 61 years, Occu. : Business,
R/o. Anantashram, Hirapur Road,
Chalisgaon, Tq. Chalisgaon, Dist. Jalgaon.

... Applicant
(Orig. Complainant)

Versus

Gulab Mohan Patil,
Age : 55 years, Occu. : Business,
R/o. At Post Wakadi,
Tq. Nandgaon, Dist. Nashik

... Respondent
(Orig. Accused)

...

Mr. Siddhartha B. Yawalkar, Advocate for Applicant.
Mr. Rahul B. Temak, Advocate for Respondent.

...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 19th APRIL, 2024

PRONOUNCED ON : 10th MAY, 2024

ORDER :

1. Original complainant, who instituted proceedings under section 138 of Negotiable Instruments Act, is intending to challenge the judgment and order of acquittal passed by learned Judicial Magistrate First Class, (Court No.3), Chalisgaon, District Jalgaon, dated 12.01.2022 passed in S.C.C. No.712 of 2010.

2. Learned counsel for applicant submitted that, accused and complainant have friendly relations. Complainant is a partner of the firm by name "Shwet Sarita Farm Product". That,

complainant is also owner of Sangli Sugar Pvt. Ltd. Sugar Factory. Accused was in need of amount of Rs.15,00,000/-. Considering his need, he gave accused the said amount on 28.09.2009. Accused issued and executed promissory note (*Usanwar Pawati*). It was notarized. Same day, accused issued one cheque of Rs.10,00,000/- dated 26.09.2009 in favour of complainant and on 30.09.2009 he issued another cheque of Rs.5,00,000/-, dated 29.09.2009 but both cheques were dishonoured and hence the above proceedings.

3. Learned counsel for applicant submitted that, there is no dispute about raising hand loan and issuing signed cheque, issuing *Usanwar Pawati*, but still learned trial court has acquitted the accused disbelieving complainant's case. That, there is improper appreciation of evidence as well as law. That, there are good grounds in proposed appeal and hence he prays for leave.

4. On the other hand, learned counsel for respondent accused would submit that there was no borrowing of any hand loan as alleged. Case set up is that, blank cheques were issued by him to Sangli Sugar Factory as a security in another transaction of supply of labours is being misused by complainant. That, there is denial of friendly loan or issuing cheques towards its repayment.

5. In support of his case, complainant has adduced his own evidence, evidence of bank official and cheque in question, bank memo, notice, *Usanwar Pawati* (Exh.79) and documents of business.

Whereas, accused has adduced his own evidence and also adduced evidence of Notary before whom Exh.79 was drawn and also adduced another witness by name Walmik Patil to substantiate his case about issuing cheques towards security in a transaction with sugar factory.

6. Considering the nature of proceedings and averments raised in the complaint, it is incumbent upon complainant to make out the case of extension of hand loan out of friendly relations and accused issued cheques only towards repayment of said hand loan. If such aspect is established, then presumption available under law comes to the aid of complainant. It is to be thus seen whether said friendly loan transaction is at the outset established or not.

7. On going through the complaint, it seems to be averred that due to friendly relations and due to financial need of accused, gave hand loan to the tune of Rs. 15,00,000/- by way of two cheques, dated 26.09.2009 and 29.09.2009 worth of Rs. 10,00,000/- and Rs.5,00,000/-. However, it is emerging from the

bank statement brought by examining Branch Manager at Exh.90 that both cheques were in the name of “Shwet Sarita Farm Product”. When it is a case of friendly loan and when complaint is titled in the personal name, how instruments in firm’s name could have been issued. It is also noticed that CW3 is not supporting complainant regarding extension of hand loan of Rs.15,00,000/- on 28.09.2009.

8. In the light of above discussion, complainant has not established extension of friendly loan. No legally enforceable debt has been demonstrated to be existing to invoke provisions of 138 of N.I. Act.

9. No good ground is made out to grant leave to file appeal nor any illegality or perversity is brought to the notice in the appreciation at the hands of learned trial court so as to grant relief as prayed. Hence, I proceeds to pass the following order :-

ORDER

Leave refused. Application is rejected.

(ABHAY S. WAGHWASE, J.)