



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PRIVATE PARTY NO. 88 OF 2019

Bandeappa s/o Mallikarjun Kante
Age : 48 years, Occ. Business,
R/o Deoni, Tq. Deoni,
Dist. Latur.

... Applicant

Versus

Madhavrao s/o Narayanrao Birajdar,
Age : 71 years, Occu: Agri.,
R/o Near B. R. Gattate Jewellers,
Near House of Amratrao Patil,
New Mondha, Shetki Niwasa,
Udgir, Tq. Udgir, Dist. Latur.

... Respondent
[Orig. Accused]

.....
Mr. V. G. Kodale h/f Mr. V. D. Gunale, Advocate for the Applicant.
Mr. R. D. Biradar, Advocate for the Respondent.
.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 11.03.2024

Pronounced on : 20.03.2024

ORDER :

1. Dissatisfied by the judgment and order of acquittal passed by learned JMFC Deoni in S.T.C. No. 147 of 2013, original complainant is hereby seeking leave to question the said judgment dated 06.03.2019.

2. Learned counsel for the applicant submitted that due to good acquaintance, on demand of accused, amount of Rs.15,00,000/- was given as loan. Towards its repayment, accused issued cheque, but it was dishonoured. That, complainant had adduced evidence of one Madhavrao Patil and had established his case, but learned trial court acquitted the accused on flimsy ground about difference in ink as regards to body of text on the cheque and the signature. Even financial capacity of complainant is questioned and rendered doubtful and accused is acquitted. That, there is improper appreciation of evidence as well as law, and hence he seeks leave to question the said judgment.

3. On the other hand, learned counsel for accused would submit that case is not proved. Huge loan is alleged to be handed over without showing source and capacity to extent such huge loan. According to him, in fact, there was some loan transaction with one Shivkumar Sontakke in 2007. It was repaid and cheque given therein as security was misused by complainant in collusion. Cousin sister of said Shivkumar is wife of complainant. Therefore, there is false implication and according to him, trial court committed no error in acquitting accused.

4. Heard both sides. Perused the papers.

5. S.T.C. 147 of 2013 seems to be instituted alleging hand loan to the tune of Rs.15,00,000/-. Specific case of complainant is that said hand loan was given in presence of CW2 Madhavrao Gangadharrao Patil and towards its repayment, cheque was issued. Cheque in question is also filed along with papers of compensation received upon acquisition of land.

6. On going through the judgment, it seems that learned trial court has held that there is no denial of signature over the cheque and therefore presumption under Section 139 of the Negotiable Instruments Act is raised in favour of complainant, but while entertaining the defence of misuse of cheque, learned trial court has held that disputed cheque Exhibit 15 carries signature of accused in blue ink where as body of the cheque is written in black ink and therefore, there is substance in the defence of accused.

7. Similarly, doubting financial capacity of accused, in para 17, learned trial Judge has held that complainant has filed copy of order dated 28.04.2011 showing he receiving compensation by way of award for land acquisition. But at the same breath learned trial court

has observed that perusal of the order goes to show that amount was awarded to complainant as contended by him, but there is no material to show that the amount was in fact paid to the complainant and that the amount of Rs. 15,00,000/- being huge and complainant having omitted to state how he arranged Rs.15,00,000/-, complainant's case seems to have been disbelieved.

8. In the light of such observations of trial court, there is arguable case. Findings are *prima facie* contrary to the material on record. Therefore, grounds exist for granting leave. Accordingly, I proceed to pass the following order:

ORDER

- I. The application stands allowed in terms of prayer clause [C].
- II. Leave is granted to file appeal.
- III. Registry to verify and register the appeal.
- IV. Appeal stands **admitted**.
- V. Call record and proceedings.

[ABHAY S. WAGHWASE, J.]