IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 111 OF 2018

Pandurang S/o. Kishanrao Belkunde
*VERSUS*
Vishnudas S/o. Appasaheb Kale And Another

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Mr. T.M. Venjane, Advocate for Appellant
Mr. R.K. Ashtekar, Advocate for Respondent No.1
Mr. B.B. Bhise, APP for Respondent No.2

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 08th JULY, 2024

ORDER :

1. By this application filed under Section 378(4) of the Code of Criminal Procedure, applicant/original complainant seeks leave to file criminal appeal against the judgment and order dated 9.04.2018, passed by learned 2nd Judicial Magistrate, First Class, Latur in S.T.C. No.2176 of 2014, thereby acquitting respondent/accused under section 138 of the Negotiable Instruments Act.

2. Complaint was filed by complainant alleging that accused had cordial and friendly relations with him and on 05.08.2014, accused was in need of money for expansion of his business and for getting service for his wife and for that purpose, he obtained hand loan of Rs.7,50,000/- from him which he promised to repay within one month. After handing

over the cash, after one month, complainant approached and requested accused to repay the hand loan. After repeated persuasion, accused issued cheque dated 08.09.2014, bearing No.208407 for Rs.7,50,000/- drawn on ICICI Bank, Branch – Latur. On presentation, the cheque was dishonoured due to insufficient funds. On 09.09.2014, intimation to that effect was received by complainant. Complainant issued R.P.A.D. notice dated 18.09.2014, calling upon accused to pay the amount, which was refused by accused. Hence, he filed private complaint.

3. Trial Court after recording evidence and hearing the parties, acquitted the accused. Hence, this application.

4. Heard learned advocate for applicant, learned advocate for respondent accused and learned APP for State. Perused the documents placed on record including impugned judgment and order of acquittal.

5. It appears that complainant contended before the Trial Court that he had brought that amount of Rs.7,50,000/- from his brother, who is doing *Adat* business at Latur. However, neither his brother was examined, nor the books of entries kept in ordinary course of business in *Adat* shop were brought on record. The said amount is also not reflected in the

income tax returns of *Adat* shop. On the cheque in question, signature of accused is in blue ink, where as the other contents of cheque are in black ink. Accused was doing money lending business for which he had licence for the period of 2011-2012. Thereafter, it appears that, he was not doing the said business. Complainant contended that for expansion of money lending business, the accused obtained loan from him. The second ground for which loan was obtained i.e. for the service of wife of accused is also not believable as wife of accused was already in service when the loan was taken. Accused produced original copies of passbook of his Bank account and on perusal of the same, trial Court has observed that accused was having sufficient balance in his account during the relevant period.

6. Though accused has admitted the signature on the cheque in question, his defence is that the cheque was issued by way of security. Complainant in his cross examination has admitted that he had advanced loan from accused in the past. This fact is not disclosed by complainant in his complainant. Trial Court has observed that accused has rebutted the presumptions under sections 118 and 139 of Negotiable Instruments Act and there was no legal liability on the part of

accused to release cheque amount, when the cheque was presented for encashment.

7. Trial Court has properly appreciated the evidence on record and has rightly acquitted the accused. There is no infirmity in the judgment and order of acquittal. It is not a fit case to grant leave to file appeal. Application for leave to appeal is therefore rejected.

[NITIN B. SURYAWANSHI ]
JUDGE