

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO.94 OF 2019

Pritpalsing Santsing Granthi,
Age : 49 years, Occu. : Private Service,
R/o. : Opp. Gurudwara, Osmanpura,
Aurangabad.

... Applicant.
(Orig. Complainant)

Versus

1. Mandave Construction,
Through its authorized signatory,
Dhanraj Ramshankar Mandave,
Age : 51 years, Occu. : Builder,
R/o. Galli No. 8, Durga Mata Colony,
Nyayanagar, Garkheda Parisar,
Aurangabad.

2. The State of Maharashtra

... Respondents.
(No.1 Orig. accused)

...
Mr. Shaikh Mobin H., Advocate for Applicant.
Mr. Kachru A. Ingle, Advocate for Respondent No.1.
APP for Respondent No.2 : Mr. S. M. Ganachari.
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 18th MARCH, 2024

PRONOUNCED ON : 1st APRIL, 2024

ORDER :

1. Original complainant, who is dissatisfied by the judgment and order of acquittal passed by learned Judicial Magistrate First Class, Court No.8, Aurangabad in S.C.C. No.7590 of 2016, is hereby seeking leave to question the said acquittal.

2. Learned counsel for applicant submitted that, proceedings under section 138 of Negotiable Instruments Act were instituted on account of dishonour of cheque issued by accused towards legally enforceable debt to the tune of Rs.2,00,000/-. That, one Sagar Mandave gave dash to the complainant's vehicle and caused huge damage. Towards said damage, cheque was issued, but it was dishonoured. All ingredients for attracting under section 138 of N.I. Act were available. Specific undertaking was given by accused to make up the loss. Issuance of cheque as well as signature over it has not been disputed, but learned trial court has acquitted the accused on the ground that, there is no legally enforceable debt made out. That, there is a good case on merits in appeal. Learned trial court has not appreciated the evidence as well as law, and therefore, he prays for leave.

3. Per contra, learned counsel for original accused respondent would submit that, complainant failed to make out essential ingredients under section 138 of N.I. Act. That, at the threshold he did not make out case of legally enforceable debt. There was no undertaking as is claimed. Therefore, learned trial court has correctly acquitted the accused and he prays to refuse the leave.

4. After considering the submissions of both sides and on

going through the papers, it transpires that, proceedings under section 138 of N.I. Act instituted by present applicant on the premise that, his Hyundai i-10 vehicle was given dash by son of accused, namely, Sagar S/o. Dhanraj Mandave and occurrence was reported to Osmanpura police station. In police station, accused had agreed to make up the loss and damage and thereby issued cheque drawn on State Bank of Patiala to the tune of Rs.2,00,000/-, but it was dishonoured and hence the proceedings under section 138 of N.I. Act.

5. Defence of accused is that, no liability was taken up, no undertaking was given and that there is no legally enforceable debt.

6. In trial court, complainant seems to have adduced his own evidence at Exh.11 along with evidence of one Babulal Yadav at Exh.26 apart from seeking reliance on cheque in question, bank memo, copy of notice and postal receipts.

7. Prima facie, it seems that the case of complainant at police station where accident was reported, accused agreed to undertake to make up the loss. Statement of accused Dhanraj (Exh.21) is placed on record, which was allegedly given at Police Station, Osmanpura. Defence of accused is that it was under pressure of police.

8. Therefore, here there is some alleged undertaking by accused to make up the loss for damage caused to the vehicle. In strict sense said agreement is not a legal agreement or contract. What section 138 of N.I. Act proceedings contemplates is a legally enforceable debt. Therefore, when legal liability is not shown to be at the end of accused and when there is no exact computation of exact loss caused to the vehicle, liability of Rs.2,00,000/- cannot be fastened. Therefore, mere undertaking Exhibited at police station, has no legal force and binding so as to hold it as a legally enforceable debt.

9. Therefore, no fault can be found in the order of acquittal passed by learned trial Judge. In strict legal parlance and in view of legal requirement of legally enforceable debt, no case to that extent being made out, order passed by learned trial court cannot be terms as illegal. No case being made out for grant of leave application, I proceed to pass the following order :-

ORDER

The application stands rejected.

(ABHAY S. WAGHWASE, J.)