



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY
NO. 112 OF 2018**

Jagruti Sugar Allied Industries Ltd.
Having registered Office at Rajiv Gandhi
Chowk, Latur Through its Chief Agri. Officer,
Prakash S/o. Marotrao Pawar
Age: 53 years, Occu.: Service,
R/o. Latur, Tq. & Dist.Latur.

....Applicant

Versus

Shivram S/o. Shripati Nagmode
Age: Major, Occu. Business,
R/o. Chincholraowadi, Tq.
and Dist.Latur.

.....Respondent

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Advocate for Applicant : Mr. P. P. More
Advocate for Respondent : Mr. T.M.Venjane

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 18 JANUARY, 2024

PRONOUNCED ON : 23 JANUARY, 2024

ORDER :

1. By instant application, original complainant, who initiated proceedings under Section 138 of the Negotiable Instruments Act (for short "N.I.Act"), is hereby seeking leave to file appeal against judgment and order passed by the learned Judicial Magistrate First Class, Deoni, Dist.Latur, acquitting respondent from offence under

Section 138 of the N.I. Act.

2. Learned Counsel for applicant submitted that applicant / complainant is a private limited Company. That respondent accused executed contract with applicant for providing and supplying services on demand and had obtained advance amount. He did not render services and on demand of repayment of advance amount, cheque was issued, but it got dishonoured and therefore, notice was sent as required under the law, however, still cheque amount has not been paid and therefore, proceedings under Section 138 of the N.I. Act were instituted, however, learned trial Court failed to consider and appreciate the case made out by applicant and acquitted respondent accused. It is pointed out that there was no dispute about issuance of cheque, or any agreement. Therefore, presumption available under the N.I. Act automatically comes into play. He further pointed out that there is no denial by accused about receipt of money. That learned trial Court merely held that complainant failed to produce account statement. Therefore, there is a good case in appeal and so applicant seeks grant of leave to file appeal.

3. In answer to above, learned counsel for respondent pointed out that applicant failed to prove that there was legally enforceable debt

or any liability. That applicant failed to prove actual transaction between applicant and accused. That learned trial Court has rightly assigned reasons in paragraph nos.12, 13 and 14 of the judgment and hence, according to him, the findings being just, legal and proper, and applicant having failed to make out a case for attracting case under Section 138 of the N.I.Act, said judgment cannot be faulted at and so he prays to dismiss the application.

4. After hearing the submissions of both the sides, it is seen that present applicant has instituted proceedings under Section 138 of the N.I. Act bearing STC No.25 of 2015 alleging that applicant, a private limited Company, entered into a contract with accused, who was a contractor for sugarcane harvesting and transportation. Case set up was that accused not only failed to render services as agreed but also took advance amount and failed to repay it and instead issued a cheque, which was drawn on Latur District Central Co-operative Bank, but the same was dishonoured for want of funds and so after issuing notice dated 24-03-2011, complaint seems to have been instituted.

5. On *prima facie* going through the papers, it seems that in support of its complaint, one Shriram s/o Gangaram Patil adduced

evidence and documents like cheque memo, agreement exh.23, postal receipt, acknowledgment receipt and Resolution of Company are placed on record.

The defence raised by accused in the trial Court is misuse of blank cheques obtained at the time of agreement. He has also raised finger to the company for committing breach of agreement. Fundamental defence is also that applicant / complainant failed to discharge the burden of proving legally enforceable liability.

Though copy of agreement is placed at exh.23, it appears to be undated. Secondly, witness on behalf of company namely Shriram s/o Gangaram Patil does not seem to be in employment at the time of agreement and therefore, question arises about his personal knowledge about alleged transaction between complainant Company and accused. This witness in cross-examination was unable to throw light about exact liability. Complainant Company did not place on record any document of financial transaction inspite it to be registered under Companies Act.

6. When objection is raised about financial transaction, then apart from cheque, it is incumbent upon complainant to demonstrate and establish through record existence of transaction as well as liability.

Precisely such documentary evidence has not been brought before the Court. Therefore, merely an agreement between the parties would not suffice, but legally enforceable debt existing at the time of issuance of cheque is also to be established for attracting offence under Section 138 of the N.I. Act. Resultantly, no fault can be found in the appreciation of evidence by the learned JMFC. No case being made out on merits to grant leave to file appeal, I proceed to pass following order :

ORDER

Application for Leave to Appeal by Private Party
No.112 of 2018 stands rejected.

(ABHAY S. WAGHWASE)
JUDGE