



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO. 55 OF 2022

Sanjay Baliram Shelke
Age : 50 years, Occu. : Agri.,
R/o. Nagalwadi, Tq. Karjat,
Dist. Ahmednagar.

... Applicant
(Orig. Complainant)

Versus

1. Sahebrao Malhari Tupe,
Age : 55 years, Occu. : Labour Supplier,
R/o. Ravalgaon, Tq. Karjat,
Dist. Ahmednagar.

... Orig. Accused

2. The State of Maharashtra

... Respondents.

...
Mr. R. K. Temkar, Advocate for Applicant
Mr. V. V. Tarde, Advocate for Respondent No.1
Mr. K. K. Naik, APP for Respondent No.2
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 08 MARCH 2024

PRONOUNCED ON : 12 MARCH 2024

ORDER :

1. Original complainant, who had instituted proceedings under section 138 of Negotiable Instruments Act, 1881 bearing S.C.C. No. 394 of 2012, is desirous of questioning the judgment and order passed by learned Judicial Magistrate First Class, Karjat dated 20.08.2021, thereby acquitting present respondents from offence punishable under section 138 of N.I. Act.

2. Learned counsel pointed out that, complainant is in the

business of supplying sugarcane, whereas, accused was a labour supplier. On demand of complainant, accused agreed to supply labours and took Rs.1,40,000/- as an advance. Towards its repayment, accused issued cheque. However, it was returned dishonoured with remark "insufficient funds" and therefore, after issuing notice when accused failed to repay, above proceedings were instituted. He pointed out that there is agreement between complainant and accused. All essential ingredients for attracting offence punishable under section 138 of N.I. Act were made available before the learned trial Judge. However, learned trial Judge has still acquitted the respondents accused, holding that, no case has been made out and even agreement has also been doubted holding that signature over it, is forged. That, in fact there was no concrete evidence to hold otherwise. Cheque as well as signature over instruments were not denied, and therefore, learned trial court ought not to have acquitted the accused. Consequently, he submits that there is a good case in appeal and hence he seeks leave to question the judgment of trial court.

3. In answer to above, learned counsel for respondent accused would point out that complainant had failed to establish the case. There was no legally enforceable debt. There was no agreement ever executed or signed by accused. There is expert's

evidence about signature to be forged and therefore, learned trial court has rightly discarded the agreement, which was only piece of evidence on behalf of complainant. Therefore, he submits that, no fault can be found in the judgment and order of acquittal and hence, he prays to refuse the leave.

4. After considering the submissions, it seems that, here, original complainant had deposited the cheque, which was allegedly issued by accused towards repayment of advance borrowed by him, thereby agreeing to supply labour for sugarcane cutting.

5. Papers show that, complainant along with the cheque in question has also placed on record (Exh.33). As learned counsel for complainant pointed out that learned trial court has discarded the very agreement (Exh.33), holding it to be forged, impugned judgment is therefore given a cursory look. It seems that, said agreement was referred to handwriting expert and he has allegedly issued opinion about signature over agreement to be forged one.

6. Though it seems that, initial presumption has been drawn by invoking sections 118 and 139 of N.I. Act, still it is open

for accused to rebut the presumption. Complainant though in support of his case of execution of agreement between complainant and accused examined two witnesses, they do not seem to be party to the actual contents of agreement. Therefore, a very document which was possessed by complainant (Exh.33) has comes under shadow of doubt. Handwriting expert's evidence has been tested by trial Judge in the light of legal requirements also, and therefore, only on incomplete satisfaction, complaint has been dismissed. No good ground made out to grant leave. Hence, I proceed to pass the following order :-

ORDER

The application stands rejected.

(ABHAY S. WAGHWASE, J.)