



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PRIVATE PARTY NO. 109 OF 2019

Rohini Vikas Patil

Age : 58 years, Occu: Household,
R/o 4-Dhakewadi behind Kanjarwada,
Near Lathi School, Jalgaon,
Taluka and District Jalgaon.

Through

Power of Attorney holder

Shri. Vikas Krushna Patil

Age : Major, Occu:

R/o 4-Dhakewadi behind Kanjarwada,
Near Lathi School, Jalgaon,
Taluka and District Jalgaon.

... Applicant
(Orig. Complainant)

Versus

Sau. Charulata Mahesh Bharambe

Age : 36 years, Occu: Business,
Prop. Aishwarya Investment,
R/o Swapnapurti, 2 Uma Residency,
Swami Samarth Nagar,
Behind Jatra Hotel, Adgaon Shivar,
Panchavati, Nashik,
Taluka and District Nashik.

... Respondent
(Orig. Accused)

.....

Mrs. Rashmi S. Kulkarni, Advocate a/w Mr. Bhushan Kathar,
Advocate for the Applicant.

Mr. M. K. Goyanka, Advocate for the Respondent.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 12.04.2024

Pronounced on : 16.04.2024

ORDER :

1. Original complainant, who instituted proceedings under Section 138 of the Negotiable Instruments Act, 1881 [NI Act] bearing S.C.C.

No. 3387 of 2015, is hereby seeking leave to file appeal, on account of acquittal of respondent from said offence.

2. Learned counsel for the applicant pointed out that accused respondent was running an investment agency and she lured complainant to invest amount by assuring that her investments would be doubled. Therefore complainant, a home maker, trusted her and invested Rs.4,50,000/-. That, even receipt to that extent has been executed. When complainant demanded her money back, initially there was reluctance, but subsequently, on consistent demand, cheque was issued, but it was dishonoured and therefore complaint was instituted after procedural formalities were completed.

3. Learned counsel for the applicant further pointed out that accused had also replied to the notice but had taken stand regarding some loan and issuing blank cheque therein and further alleged its misuse. However, learned counsel pointed out that contrary and distinct stand has been taken while answering under Section 313 of the Code of Criminal Procedure [Cr.P.C.]. Learned counsel pointed out that Exhibit 21 i.e. receipt fortified her case and there is no denial of issuance of Exhibit 21. According to her, learned trial court has unfortunately failed to appreciate the evidence in correct perspective

and pointed out that learned trial court merely doubted handing over of cash for investment. She invited attention of this Court to the judgment and would submit that apparently there is improper appreciation of evidence as well as law. Consequently, submitting that there is a good case in appeal, she prays for leave.

4. In answer to above, learned counsel for accused would point out that firstly, the complainant could not demonstrate her source and accumulation of such huge amount. That, alleged transaction and agreement has not been cogently proved. Consequently, there was no legally enforceable debt and so, it is his submission that, learned trial court rightly dismissed the complaint.

5 After considering the submissions of both sides and on going through the papers, it seems that S.C.C. No. 3387 of 2015 was instituted by present applicant, a home maker, against respondent. Gist of the complaint is that complainant invested Rs.4,50,00/- with respondent, who is said to be a proprietor of an agency named Aishwarya Investment. According to the complainant, she handed over cash on 20.08.2013 of which receipt was said to be issued. After some period, when complainant demanded the invested amount, initially there was refusal but subsequently accused issued cheque

drawn on the State Bank of India, but it was dishonoured and hence statutory notice was issued. When cheque amount was not received, above complaint was instituted.

6. In trial court, complainant seems to have examined herself (CW1) and apart from tendering cheque in question, bank memo, copy of legal notice, receipt Exhibit 21 allegedly issued by accused are also placed on record. Complainant has also adduced evidence of her brother (CW3) as well as a police personnel (CW2).

7. Learned trial court seems to have acquitted accused holding that there is no evidence of transaction of handing cash and secondly, complainant's brother (CW3) had admitted that there was no agreement that double amount would be returned and that there is no documentary evidence regarding complainant having Rs.4,50,000/-. Learned trial court has also doubted complainant's case about she having Rs.4,50,000/- and finally, doubting Exhibit 21, acquittal seems to have been recorded.

8. Record shows that accused herself did not step into the witness box. Apparently, issuance of cheque and signature has not been refuted or denied and stand seems to have been taken regarding some

loan. But no distinct evidence or details of said loan or its particulars seem to be provided. Resultantly, worthiness of Exhibit 21, i.e. receipt allegedly issued upon acceptance of Rs.4,50,000/-, needs to be properly appreciated. Suggestion seems to have been given that there was no assurance of doubling the invested amount. Inference from such suggestion that can *prima facie* be drawn is that, investment has not been denied. Going by the impugned judgment, *prima facie* there does not seem to be sound reasons assigned for non-acceptance of Exhibit 21. Consequently, there is a point which needs to be dealt and decided in appeal. Hence, case to that extent being made out, leave as prayed deserves to be granted. Accordingly, following order is passed:

ORDER

- (i) Application stands allowed.
- (ii) Leave is granted to file Appeal.
- (iii) Registry to register the Appeal.
- (iv) Appeal stands **admitted**.
- (v) Call record and proceedings.

[ABHAY S. WAGHWASE, J.]