



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO.114 OF 2019

C.T. Chits Private Ltd. Company Nanded,
Gurukrupa Market, Mahavir Chowk, Nanded,
Through its Recovery Manager,
Virendrasingh Mahendrasingh Gour,
Age : 40 years, Occu. : Service,
R/o. : Gurukrupa Market, Mahavir Chowk,
Nanded.

.... Applicant.
(Orig. Complainant)

Versus

Gaus Maulana Mugal,
Age : 33 years, Occu. : Business,
R/o. : Zamzam Water Suppliers,
Shop No.2, Vijapure Complex,
Near Manohar Talkies, Nanded.

.... Respondent
(Orig. Accused)

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Mr. Satyajit S. Bora, Advocate for Applicant.

Mr. D. A. Bide a/w Mr. L. S. Shaikh, Advocates for Respondent.

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 14th MARCH, 2024

PRONOUNCED ON : 3rd APRIL, 2024

ORDER :

1. Original complainant, who instituted proceedings under section 138 of Negotiable Instruments Act against present respondent, is aggrieved by judgment and order of acquittal passed by learned Judicial Magistrate First Class, Nanded dated 02.04.2019.

2. It is pointed out that, complainant is involved in the chit fund business and is duly registered under the Chit Funds Act. Accused is member of chit group. In an auction, accused offered highest bid and before giving the price amount, he furnished securities to the company for payment of future remaining installments. However, he became irregular in its payments. The amount went on mounting, and therefore, when complainant made a request, he issued cheque of Rs.1,90,000/-, but on its presentation, it was dishonoured and above proceedings were instituted.

3. It is further pointed out that, in support of complaint apart from authorized Manager, disputed cheque, bank return memo, postal acknowledgment, resolution and original Agreement were placed on record. Even one witness, namely, Ganesh Kanjalkar, who was examined and thereby full-proof case was made out. That, learned trial court also drew initial presumption in favour of complainant, but accused is finally acquitted on a sole ground of improper notice. According to learned counsel, there is apparently improper appreciation of law. Merely on technical ground complaint has been dismissed. There is a good case on merits. Hence, he prays for leave.

4. On the other hand, learned counsel for respondent

pointed out that, as essential ingredients for attracting provisions of section 138 of N.I. Act, more particularly, statutory notice has not been proved to be served, therefore, learned trial court has rightly acquitted the accused and hence he prays to refuse the leave.

5. Heard. Perused the papers. Proceedings bearing S.C.C. No.2404 of 2015 seems to be instituted by applicant alleging for commission of offence under section 138 of N.I. Act. Learned trial court seems to have held that, there is presumption in favour of complainant and it has remained unrebutted and accordingly point no.1 is answered in affirmative. However, complaint has been dismissed on the ground that, legal notice does not disclose the reason for its issuance, and hence, it is improper explanation. That, details of liability of accused are not clearly spelt out.

6. In the light of above, perused the legal notice (Exh.29) issued on 23.09.2015. Scrutiny of the same issuance to the present respondent is put to notice under section 138 of N.I. Act, informing that, cheque No.135162 of Rs.1,90,000/- dated 19.09.2015 drawn on SBH Mukhed has been dishonoured.

7. Learned counsel for applicant strongly submitted that, accused is already aware of the nature of business entered into by him with complainant and therefore there is adequate knowledge

for what legal notice is issued.

8. There is substance in such submission. Accused has admitted himself to be member of chit fund group and there is no denial of prized bidder. Resultantly, there is only sole transaction between complainant and accused. Prima facie, notice carries date of cheque, amount and date of dishonour. Learned trial court seems to have held that, issuance of notice as well as receipt of notice are not denied. However, only legal notice to be bereft of details of liability, it is held to be improper service.

9. Hence, there is debatable issue to be dealt. The same can be done only on full-fledged hearing of the appeal. Hence, leave as prayed deserves to be granted. Accordingly, I proceed to pass the following order :-

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.)