



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

**APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY
NO. 143 OF 2018**

Renukadas S/o. Radhakrishna Pujari
age: 46 years, Occu.: Business,
R/o. Vitthal Mandir, Dhavni Mohalla,
Aurangabad.

....Applicant

Versus

Shaikh Musaib s/o. Shaikhlal Qureshi
Age: 30 years, Occu.: Business,
R/o. Plot No.40, Section N-11,
Cidco, Near Mughal Art Place,
Aurangabad.

.....Respondent
(Orig. Accused)

.....
Advocate for Applicant : Mr.Ajit D. Kasliwal
Advocate for Respondent : Mr.G.R.Syed

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 15 JANUARY, 2024

PRONOUNCED ON : 29 JANUARY, 2024

ORDER :

1. Dissatisfied by the judgment and order of acquittal passed by the learned Judicial Magistrate First Class, Aurangabad in SCC No.6249/2011, applicant / original complainant is intending to file appeal and hence by way of instant application, he is seeking leave.

2. Learned Counsel for applicant submitted that transaction was proved, issuance of cheque and signature over it is not denied and therefore, presumption under Section 118 of the Negotiable Instruments Act (NI Act) was available. Respondent accused did not rebut the presumption. He did not step in the witness box. However, learned trial Judge still acquitted the accused. Therefore, there is improper appreciation of evidence and hence, he seeks leave to file appeal.

3. Learned Counsel for respondent would submit that applicant failed to prove very transaction. There was no legally enforceable debt. Consequently, he justifies and supports the acquittal.

4. Perused the papers and impugned judgment. Case set up by complainant is that out of cordial relations, accused approached complainant with proposal for purchasing landed property and assured to contribute at his end also. According to applicant, he paid Rs.5,50,000/- in cash from the saving account and remaining Rs.2,50,000/- from the amount lying with the applicant at that time and thereby he made payment. Accused assured to return Rs.7,21,000/- and towards repayment, he issued cheque, but it was

dishonoured and hence proceedings under Section 138 of the NI Act was initiated.

5. Defence of accused is that he was mentally ill and taking disadvantage of the same, cheque was forcibly taken. It seems that in support of such defence, accused has adduced evidence of one Soheb Shaikh Lal Qureshi and also placed on record document exh.86 i.e. medical certificate. It seems that applicant, during his cross-examination, admitted treatment of accused by Dr.Qadri.

6. However, considering the nature of proceedings, it is important for applicant to demonstrate that there was legally enforceable debt i.e. at the time of issuance of cheque in question. It is further duty of applicant / complainant to establish foundational facts regarding agreement reached between them regarding purchase of landed property. Apparently, except bald statement in complaint, there is nothing in black and white to show that there was some transaction between them regarding purchase of landed property. Even details of landed property, which was proposed to be transacted, have not been provided by applicant. Resultantly, evidence of applicant is falling short regarding he giving accused part amount by way of cash and

part amount by way of cash transaction. Resultantly as there is fragile and weak evidence about existence of legally enforceable debt, case of applicant cannot be accepted.

7. Therefore, taking into account the quality of evidence from applicant's side, no fault can be found in the judgment and order passed by trial Court. No case is made out on merits so as to grant leave as prayed for. Hence I proceed to pass following order.

ORDER

Application for Leave to Appeal by Private Party No.143 of 2018 stands rejected.

(ABHAY S. WAGHWASE)
JUDGE