



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PRIVATE PARTY NO. 23 OF 2021

Mandar Santosh Bhargave

Age : 37 years, Occupation : Service,
R/o 404, Gaurav Pride, Bhagwan Nagar,
Bhumkar Chowk, Wakad, Pune.

... Appellant
[Orig. Complainant]

Versus

1. Madhusudan Trimbak Rajebahaddar
President
M/s. Rajebahaddar Heart Foundation Pvt. Ltd.,
Age: 55 years, Occupation : Business,
R/o 95, Tarang Lane No.5, Jaiprakash Nagar,
Goregaon (East), Mumbai.
2. M/s. Rajebahaddar Hospital and Research
Center Pvt. Ltd. Through its Director
- 2A. Shri Madhusudan Trimbak Rajebahaddar
Age: 55 years, Occupation Business,
R/o Plot No. 13-14/199,
Rajebahaddar Colony, Tilak Road, Nashik.
- 2B. Sau. Jyoti Madhusudan Rajebahaddar
Age: 50 years, Occupation: Business,
R/o Plot No. 13-14/199,
Rajebahaddar Colony, Tilak Road, Nashik.
3. Madhusudan Trimbak Rajebahaddar
Age : 55 years, Occupation: Business,
R/o C/o Rameshwar S. Malani,
Manek Heights, 6th Floor, Flat No. 601,
Kulkarni Bag, Lane No.3,
Near Yog Vidyan, College Road, Nashik.

... Respondents
[Orig. Accused]

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Mr. Akshay Kulkarni, Advocate h/f Mr. Amit A. Yadkikar, Advocate
for the Applicant.

Mr. Abhijit G. Choudhari, Advocate for the Respondents.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 27.06.2024

Pronounced on : 01.07.2024

ORDER :

1. On account of acquittal of present respondents from offence under Section 138 of the Negotiable Instruments Act, 1881 [N.I. Act] original complainant has pressed into service instant leave application praying to accord leave to file appeal against the judgment and order passed by learned Chief Judicial Magistrate, Court No.2, Ahmednagar in S.C.C. No. 1405 of 2019 dated 31.03.2021.

2. Learned counsel for the applicant pointed out that proceedings were instituted by complainant alleging commission of offence punishable under Section 138 of the N. I. Act. That, accused and his two sons were intending to expand hospital business and therefore, out of friendly and longstanding relations, as accused persons were in need of money, he and his father had jointly helped accused by extending friendly loan to the tune of Rs.25,00,000/-. That, receipt to that extent was also executed and that accused had agreed to repay the amount within two to three years. That, in 2018, complainant was in need of money, more particularly for the treatment of his father

and therefore, he demanded repayment and towards it, cheque was issued on 29.11.2018 with assurance that the same would be honoured. That, even four other cheque were issued, but in the names of father and mother of complainant as complainant's family was joint family. That, cheque got dishonoured and therefore, as required, legal notice was dispatched, but accused failed to repay the amount in spite of receipt of said notice. Therefore, proceedings under Section 138 of the N.I. Act were instituted.

3. Learned counsel further pointed out that there was no denial of issuance of cheque or signature over it. Only stand taken was that it was towards security. That, moreover, learned trial court dismissed the complaint by invoking Section 141 of the N.I. Act, i.e. on the ground that company was not made party. Learned counsel invited attention of this Court to the cause title and would submit that, apart from giving names of respondent nos. 2A, 2B and 3, name of the company was arrayed as respondent nos. 1 and 2. Therefore, according to learned counsel, learned trial court has erred in dismissing the complaint. There is a good case in appeal on merits, and hence, he seeks leave.

4. In answer to above, learned counsel for the respondents/original accused would submit that learned trial court has rightly considered that there was no legally enforceable debt. That, there was no cheque towards any friendly loan, rather, cheque issued by way of security has been misused. Learned counsel for the respondents relied on the ruling of the Hon'ble Apex Court in the case of ***Aneeta Hada and Others v. Godfather Travels and Tours Pvt. Ltd. and Others*** reported in AIR 2012 SC 2795.

5. Heard both sides.

6. Present leave application is by complainant, who instituted proceedings under Section 138 of the N.I. Act against present respondents. After considering the oral submissions advanced before this Court, on one hand, it is case of applicant/original complainant that amount of Rs.25,00,000/- was given to accused due to longstanding relations, i.e. for hospital business of respondents, and towards payment of such amount, receipt was also executed. On the other hand, stand of respondents is that there was no transaction of any loan as alleged. Rather, cheque given towards security has been misused.

7. Trial court seems to have held that there was transaction between M/s Rajebahaddar Heart Foundation Pvt. Ltd. and complainant, but said company is not made an accused, and by invoking Section 141 of the N.I. Act, such necessary party being not arrayed, complaint seems to have been dismissed.

8. Perused the complaint. Title clause carried names of parties, i.e. [1] Madhusudan Trimbak Rajebahaddar, President of M/s Rajebahaddar Heart Foundation Pvt. Ltd. and [2] M/s Rajebahaddar Hospital and Research Center Pvt. Ltd. through Director, apart from respondents [2A] and [2B] who apparently seem to be husband and wife.

9. It is also noticed that in para 40 of the judgment, learned trial court has also observed that in statement under Section 313 of Cr.P.C., accused Madhusudan Trimbak Rajebahaddar has admitted that he is responsible for the functioning of the company. However, learned trial court further went to observe that, that itself is not sufficient to hold the President vicariously liable for the act of the company. It emerging that infact, in para 2 of the impugned judgment itself, complainant's case is narrated that accused nos. 1, 2A and 2B are responsible for day to day work of the company.

8. Therefore, considering above material in the judgment and the submissions advanced before this Court, and there to be a mere defence of cheque to be issued not towards any legal liability but towards security, good ground is made out to be dealt in a full fledged appeal. Hence, I proceed to pass the following order :

ORDER

- I. Application is allowed.
- II. Leave is granted to file appeal.
- III. Registry to register the appeal.

[ABHAY S. WAGHWASE, J.]