



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO.149 OF 2018

Atmaram Bhagwan Zhate,
Age : 34 years, Occu. : Service,
R/o. Aajabnagar,
Tal & Dist. Aurangabad.

.... Applicant.

Versus

Radhika Dresses Tq. Mantha, Dist. Jalna,
Through Proprietor Amit Narayan Bharatiya,
Age : 38 years, Occu. : Service,
R/o. : Radhika Dresses Mantha,
Dist. Jalna.

.... Respondent.

...
Mr. Jitendra M. Wagh, Advocate for Applicant.
Mr. Pawan K. Lakhotiya, Advocate for Respondent.
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 29th JANUARY 2024

PRONOUNCED ON : 01st FEBRUARY 2024

ORDER :

1. Aggrieved by the judgment and order of learned Judicial Magistrate First Class, Mantha in S.C.C. No.382 of 2014 acquitting respondent from offence punishable under section 138 of Negotiable Instruments Act, 1881, provisions under section 378(4) of Cr.P.C. are hereby invoked, praying to grant leave to file appeal against above order.

2. According to learned counsel for applicant, there were

friendly relations between parties. Complainant is involved in business of cloth. Respondent, who is acquainted with complainant had borrowed hand loan to the tune of Rs.1,25,000/-. Towards repayment he issued cheque, but on its presentation it was dishonoured, and therefore, legal notice was dispatched, but he still failed to pay the amount. According to the learned counsel, initial presumption was in favour of complainant and even learned trial court had held so. However, finally by order dated 07.05.2018 complaint is dismissed, holding that, cheque was not shown to be issued towards legally enforceable debt and there was no legal liability. According to learned counsel, such findings are bereft of the evidence. There is improper appreciation of evidence as well as law and so he seeks leave to prefer appeal.

3. Per contra, learned counsel for respondent accused would submit that, complainant had miserably failed to establish the essential requirements. There were several alterations, interpolations as regards to debts are concerned. Therefore, claim was rendered doubtful. Moreover, blank cheques were obtained from accused and the same were misused. Hence, it is submitted that, as no case is made out, learned trial court has rightly dismissed the complaint.

4. After considering the submissions and on going through the impugned judgment, it *prima facie* emerges that, learned trial court has held that there is presumption in favour of complainant by virtue of section 118 of N.I. Act. However, on findings about failure of complainant to demonstrate and establish legal debt, accused seems to have been acquitted. Stand of complainant was that he was in cloth business, but no independent oral and documentary evidence regarding such business has been placed on record. Further stand that after he shifted to Aurangabad, his brother conducted and carried the business is also not demonstrated and established and further so called brother is not examined. Further case is that, amount was handed over to accused in presence of one Babasaheb Jadhav is also not established by examining said person.

5. It also seems from para 30 of the judgment that there are certain corrections and interpolations over the date of legal notice. Complainant apparently seems to have failed to adduced evidence regarding extension of so called hand loan. All above such circumstances seems to have prevailed over learned trial court in holding that, complainant failed to prove his case.

6. Prima facie, taking above material into consideration,

in the considered opinion of this court that, no fruitful purpose would be served by granting leave. Evidence discussed above prima facie shows that, so called transaction of lending has itself comes under shadow of doubt. Hence, no case being made out, leave so sought is liable to be refused. Hence, I proceed to pass following order :

ORDER

The application stands rejected.

(ABHAY S. WAGHWASE, J.)