

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO.156 OF 2018

Kailas S/o. Shivrajappa Kaware,
Age : 34 years, Occu. : Business,
R/o. Bhagya Nagar, Shellal Road,
Udgir, Tq. Udgir, Dist. Latur.

... Applicant.
(Orig. Complainant)

Versus

Shri Anwarkhan S/o. Sattarkhan Pathan,
Age : 39 years, Occu. : Business & Agri.,
R/o. Ambedkar Chowk, Kawthala Road,
Walandi, Tq. Deoni, Dist. Latur.

... Respondent.

...
Mr. Vinod S. Salve h/f. Mr. Manoj G. Biradar, Advocate for Applicant.
Mr. S. S. Thombre, Advocate for Respondent.
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 5th FEBRUARY 2024

PRONOUNCED ON : 8th FEBRUARY 2024

ORDER :

1. On account of acquittal of respondent for offence under section 138 of the Negotiable Instruments Act, 1881 by learned Judicial Magistrate First Class, Deoni in a complaint instituted by applicant-original complainant, leave to file appeal has been sought.

2. Learned counsel for applicant would submit that, there was a transaction of hand loan. Towards repayment of the same, respondent accused issued cheque. Apparently, it was towards legally enforceable debt. Issuance and signature is not disputed

and therefore, it is pointed out that, initially learned trial court also drew legal presumption. However, complaint is dismissed by learned trial court, holding that, no transaction is proved. Learned counsel took this court through the observations of the learned trial Judge in paragraph nos. 19 and 20 of the judgment and erred in holding that there was no acquaintance and friendly relations between complainant and the accused and that cheque was not established to be issued towards legal liability. Learned counsel pointed out that such observations are in absence and contrary to the evidence. Therefore, there being a strong case on merits in appeal, he seeks leave.

3. Supporting the judgment, learned counsel for respondent accused submits that, complainant had failed to establish the essential requirements. Complainant failed to demonstrate very acquaintance between both of them, and therefore, there was no question of seeking hand loan or its extension. Legal debt was also not demonstrated and therefore, it is submitted that, no fault can be found in the judgment of trial Judge.

4. After considering the submissions of both sides and on appreciating the papers, it seems that, in support of his case of extension of friendly loan to the tune of Rs.40,000/-, complainant

adduced his own evidence along with two disputed cheques at Exh.23 and 24 and intimation notice (Exh.25 and 26).

5. On going through the papers, *prima facie* it seems that, complainant has not demonstrated and proved demand notice, which is a statutory notice. Furthermore, while facing cross, complainant seems to have admitted that, through one Uttam Biradar he came to know the accused. Fundamental question about direct relations between complainant and accused seems to have cropped up. There is no independent evidence about extension of hand loan of Rs.40,000/- except averments to that extent. Thus, apart from technical lacunas, it has not been established that, there was hand loan and towards repayment, cheques in question were issued. Defence of accused is of non acquaintance. Therefore, case of complainant apparently comes under shadow of doubt. Moreover, statutory notice is not proved to be issued. Resultantly, no fault can be found in the findings of trial Judge and further no fruitful purpose would be served by granting leave. Findings no merits, I proceed to pass the following order :-

ORDER

The application stands rejected.

(ABHAY S. WAGHWASE, J.)