



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO.26 OF 2021

Ravindra S/o. Sonba Wable,
Age : 36 years, Occu. : Agriculturist/Transport,
R/o. Madhevadgaon,
Tq. Shrigonda, Dist. Ahmednagar.

... Applicant
(Orig. Complainant)

Versus

Pravin s/o. Popat Wable,
Age : 43 years, Occu. : Agril.,
R/o. Madhevadgaon,
Tq. Shrigonda, Dist. Ahmednagar

... Respondent
(Orig. Complainant)

...
Mr. Gajanan G. Kadam, Advocate for Applicant
Mr. Prashant N. Khedkar, Advocate for Respondent
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 14th MARCH, 2024

PRONOUNCED ON : 22nd MARCH, 2024

ORDER :

1. Judgment and order of acquittal dated 09.07.2021 passed by learned Judicial Magistrate First Class (Court No.2), Shrigonda, Dist. Ahmednagar in S.C.C. No.29 of 2015 is sought to be challenged by way of appeal and hence leave of this court is prayed for.

2. Learned counsel for applicant submitted that, proceedings under section 138 of N.I. Act were instituted against respondent, who had obtained hand loan of around 9 lakh and

some odd amount. Towards repayment cheque was issued, but it was dishonoured. Therefore after notice, cheque amount was not paid, above proceedings were instituted. According to learned counsel, there is no denial of hand loan and issuance of cheque or signature over it, but still learned trial court has acquitted accused on the sole ground that complainant failed to establish his financial capacity to extend loan and that possibility of blank cheque being misused. He pointed out that, defence witness has admitted that, the amount has given in his presence, but the same has not also been correctly appreciated. Therefore, according to learned counsel, there is improper appreciation, and therefore, there being a good case on merits in appeal. He prays for leave.

3. Per contra, learned counsel for respondent accused would submit that, complainant failed to make out availability of essential ingredients of 138 N.I. Act. There is clear admission that complainant had no financial capacity. Complainant did not establish existence of legally enforceable debt, and therefore, learned trial court committed no error in dismissing the appeal.

4. Heard both sides. It seems that, proceedings under section 138 of N.I. Act were instituted by complainant, alleging that, he and respondent are relatives. Accused demanded hand

loan to the tune of Rs.12,00,000/-, but when inability was expressed by complainant, accused requested to raise hand loan as much as possible. Therefore, complainant took advance from Kukdi Co-operative Sugar Factory, Pimpalgaon Pisa. That, he has his contribution of Rs. 5,22,000/- and thereby extended hand loan to the tune of Rs.9,22,000/- in presence of Rajendra Wabale and Dhiraj Wabale. That, Dhiraj Wabale has been examined.

5. Defence from accused is that, false case has been filed and blank cheques issued as security while executing transfer agreement, is misused.

6. It seems that, in spite of allegedly paying Rs.9,22,000/- as hand loan, surprisingly, there is nothing in black and white. There is no agreement or promissory note to substantiate extension of hand loan. Nothing is placed on record to demonstrate his own contribution out of above loan amount i.e. to the tune of Rs.5,22,000/-. Moreover, defence taken by accused was probalilized i.e. misuse of security cheques. Therefore, above discussion shows that, there is weak evidence on behalf of complainant for substantiating extension of hand loan as claimed. Therefore, though there is initial presumption, complainant seems to have failed to demonstrate existence of very legally enforceable

debt. Consequently, no fault can be found in the findings of trial court. As no case being made out, leave is required to be refused.

Hence, following order :-

ORDER

The applicants stands rejected.

(ABHAY S. WAGHWASE, J.)