

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT.PARTY NO. 140 OF 2019

Sumant S/o. Ramhari Bikkad,
Age : 41 years, Occu. : Agril.,
R/o. Naholi, Tq. Kaij, Dist. Beed.

... Applicant.
(Orig. Complainant)

Versus

Anna S/o. Govardhan Tandale,
Age : 31 years, Occu. : Service,
R/o. Tandlyachiwadi, Tq. Kaij,
Dist. Beed.

... Respondent.
(Orig. Accused)

...
Mr. Akash D. Gade, Advocate for Applicant.
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 19th JANUARY, 2024

PRONOUNCED ON : 24th JANUARY, 2024

ORDER :

1. Original complainant, who instituted proceedings under section 138 of Negotiable Instruments Act, 1881, is aggrieved by the judgment and order of acquittal passed by learned Judicial Magistrate First Class, Kaij, District Beed in Summary Criminal Case No.165 of 2014, dated 27.05.2019 and is hereby intending to file appeal and thus seeking leave of this court.

2. Learned counsel would submit that, respondent accused had agreed to purchase truck for consideration of Rs.3,67,000/- and an agreement was also reached. That, amount of

Rs.35,000/- was also paid by way of earnest amount and further time to time Rs.35,800/- were also paid towards the dues. That, 3,86,000/- was due including interest. Accused issued three cheques, but the cheque to the tune of Rs.2,50,000/- was returned dishonoured, and therefore, accused was put to notice to pay cheque amount, but he failed to pay the amount therefore proceedings under section 138 of N.I. Act were initiated.

3. He further submitted that there was no dispute regarding transaction. Notice was received, but was not replied. Therefore, presumption came into play. False defence of cheque to be stolen was taken. That, learned trial court unfortunately accepted the said defence. According to learned counsel, there was ample evidence about transaction, issuance of cheque, and legally enforceable debt. Accused failed to rebut the presumption, but learned trial court acquitted the accused, and therefore, finding a fault with the appreciation of evidence by the learned trial court, he prays for leave to question the same.

4. This matter is of 2019. Record shows that, respondent is served, but is not appearing and contesting the application. In spite of last chance being granted as none remained present to answer, matter is taken up for order.

5. After considering the submissions, it seems that, present proceedings instituted under section 138 of N.I. Act, alleging dishonour of cheque (Exh.34). Accused took up stand that cheques in question were stolen. But, no report to that extent seems to have been lodged.

6. However, complainant has to show that there was legally enforceable debt. Learned counsel for applicant had submitted that, there is an agreement between the parties. However, it appears that, the said agreement was between complainant on one hand and one Sudam Tandale. Resultantly, there is no privity of contract between complainant and present accused respondent. There seems to be clear admission to this extent at the end of complainant while under cross. Hence, issue of legally enforceable debt and liability arises. Precisely, for the same reasons, learned trial Court has acquitted the accused.

Resultantly, no fault can be found in the impugned judgment so as to grant leave as prayed for. Hence, I proceed to pass following order :

ORDER

The application is hereby rejected.

(ABHAY S. WAGHWASE, J.)