



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO.27 OF 2021

Rajendrakumar Bhausahab Landge,
Age : 39 yers, Occu. : Agri.,
R/o. At Pimpalgaon Landga, Post Mahekari,
Tq. & Dist. Ahmednagar.

... Applicant
(Orig. Complainant)

Versus

1. Bhima Genuji Kharse,
Age : 47 years, Occu. Agri.,
R/o. At Post Kodgaon,
Tq. & Dist. Ahmednagar.

2. The State of Maharashtra

... Respondents.

...
Mr. Z. H. Farooqui h/f. Mr. N. V. Gaware, Advocate for Applicant.
Mr. V. C. Solshe, Advocate for Respondent No.1.
Mr. S. M. Ganachari, APP for Respondent No.2 – State.
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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 23rd FEBRUARY, 2024

PRONOUNCED ON : 29th FEBRUARY, 2024

ORDER :

1. Original complainant of proceedings under section 138 of Negotiable Instruments Act, 1881 is hereby seeking leave to question the judgment and order of acquittal passed by learned Additional Chief Judicial Magistrate, Court No.12, Ahmednagar dated 29.01.2020 in S.C.C. No. 628 of 2018.

2. Learned counsel for applicant pointed out that, as due to close acquaintance, present applicant i.e. original complainant

had extended friendly loan to the tune of Rs.1,90,000/- due to financial crises as well as repayment of some loan. Accused assured to repay the same in three months. On repeated demand, finally he issued cheque, but on its representation, it was dishonoured. That, therefore, legal notice was issued, but in spite of its receipt, accused failed to repay the amount, and therefore, proceedings under section 138 of N.I. Act were initiated. That, liability, handing over of cheque, signature over the cheque were not dispute and therefore, there was strong presumption in favour of complainant. It is pointed out that, however, learned trial court has acquitted the accused on the sole ground that, complaint failed to prove and establish that when exactly loan was extended. That, there is improper appreciation and so learned counsel seeks leave to question the said judgment and order.

3. On the other hand, learned counsel for respondent would submit that, there was no legal liability, and therefore, no question of issuing cheque. That, complaint utterly failed to establish the legally enforceable debt, and therefore, compliant was rightly dismissed.

4. In the light of above submissions and on going through the complaint as well as judgment it seems that, *prima facie*,

complainant seems to have put a case that, because of friendly relation, on account of financial crises, he gave Rs.1,90,000/-, but when cheque towards repayment was issued it was dishonoured and hence the proceedings under section 138 of N.I. Act were instituted.

5. In trial Court, apart from his own evidence, complainant has placed on record cheque in question, bank memo, notice and postal acknowledgment etc.

6. Specific defence raised by accused is that in 2016 he had borrowed hand loan to the tune of Rs.30,000/- and at such time, he had handed over blank but signed cheque. Said loan had repaid, however complainant did not return the blank cheque and has rather misused the same for instituting present complaint.

7. Learned counsel for respondent accused invited attention of this court to the cross of the complainant, wherein he is found to be admitting about agreeing to give hand loan of Rs.30,000/- and issuing cheque no.14581 for Rs.29,000/-. Bank personnel is also examined, who confirms the debit of Rs. 29,000/- from complainant on 30.11.2016 and it being credited to the account of accused on 03.12.2016.

8. Resultantly, complainant *prima facie* fails to establish and substantiate extension of hand loan of Rs.1,90,000/- to accused by adducing any independent, distinct, oral or documentary evidence.

9. Even as pointed out, here, statutory notice though is of 26.12.2017, when it was dispatched has not been demonstrated. Therefore, there are lapses which are vital in proceedings from such nature. Evidence is apparently deficit in nature. Consequently no case made out for grant of leave. Hence, I proceed to pass the following order :-

ORDER

The application stands rejected.

(ABHAY S. WAGHWASE, J.)