



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

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

Majalgaon Sahakari Sakhar Karkhana Ltd.
Sundarnagar, Post. Telgaon Tq. Dharur,
Dist. Beed.
Through Shekhar Shivajirao Thavare,
Age; 55 years, Occ; Service,
R/o; Majalgaon Sahakari Sakhar Karkhana Ltd.,
Sundarnagar, Post, Telgaon, Tq. Dharur,
Dist. Beed. ...Applicant

VERSUS

Bajirao s/o Dagadu Rathod,
Age; 55 years, Occ; Agri & Contractor,
R/o; Kanifnath Tanda, Post, Jahangir Moha
Tq. Dharur, Dist. Beed. ...Respondent

...
Advocate for the Applicant : Mr. M.P. Kale h/f Mr. Sharad S.
Sonlanke
Advocate for the Respondent : Mr. A.D. Aghav
...

CORAM : ABHAY S. WAGHWASE, J.

Date of Reservation : 12.03.2024
Date of Pronouncement : 18.03.2024

PER COURT :

1. The Instant leave application is filed to question the

judgment and order of acquittal passed by the J.M.F.C. Majalgaon, in SCC 414 of 2013, thereby acquitting the respondent for the offence punishable u/sec. 138 of the Negotiable Instruments Act.

2. It is submitted that A complaint by Co-Operative Sugar Factory was filed alleging that accused had entered into an agreement to provide truck for transporting sugar cane to the sugar factory. He had obtained advance of Rs. 5,00,000/-. An amount of Rs. 3,83,119/- was due towards accused and towards its repayment he issued cheque, but it was dishonoured and therefore the complaint was instituted.

3. It is next submitted that in spite of all necessary ingredients for attracting offence under 138 of N.I. Act being available, learned trial Court has acquitted the accused, holding that there was no legally enforceable debt. There is improper appreciation of evidence. Thus, there is a good case on merit. Hence he seeks leave.

4. In answer to above the learned counsel for the

respondent would submit that the complainant failed to make out full proof of case. There is no cogent and convincing evidence regarding agreement or advance taken by the accused. That, in fact, accused is not the owner of the said truck which was said to be engaged for conveyance. Therefore, learned trial Court rightly acquitted the accused and hence he prays for dismissal of the application.

5. In the light of above submissions and papers placed on record are put to scrutiny. It seems that Section 138 of N.I. proceedings instituted by Majalgaon Co-Operative Sugar Factory, alleging that an agreement was reached with the accused in the year 2011-12 for transporting sugar cane. It is specifically averred that agreement was entered on 15.06.2011. Accused issued cheque towards dues but it was dis-honoured, therefore, after notice, when accused failed to pay cheque amount, a complaint was instituted.

6. Defence of accused is of complete denial of any agreement, advance or legal dues. His defence is misuse of blank cheque given by way of a security.

7. On going through the evidence, it seems that though there was specific case of complainant about entering in to an agreement, said agreement has not been placed on record by the complainant. Therefore, very transaction has no foundation. The case of the accused that he is not the owner of the truck has not been rebutted by the complainant i.e. by placing title of documents of the truck. No record is placed by the sugar factory about advance being paid to the accused, therefore, apparently, complainant has failed to prove and substantiate its case. Therefore, no fault can be found in rejection of the complaint. No good ground is made out to grant the leave. Hence application for leave to appeal is rejected.

(ABHAY S. WAGHWASE)
JUDGE

mahajansb/