

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD



APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO.101 OF 2023

Mr. Sanjay s/o. Sahebrao More,
Age : 47 years, Occu. : Service and Agri.,
R/o. Plot No.14, Bhagyodhara Nagar,
At Post and Tq. Chopda, Dist. Jalgaon.

... Applicant
(Orig. Complainant)

Versus

1. Mr. Sudarshan S/o. Pradip Shinde,
Age : 40 years, Occu. : Business,
R/o. Flat No.6, 2nd Floor,
Rami Sankool, Kathe Galli,
Dwarka Nashik - 422 011.

... Orig. Accused.

2. The State of Maharashtra

... Respondents.

...
Mr. Bhargav B. Kulkarni, Advocate for Applicant.
Mr. K. P. Rodge, Advocate for Respondent No.1.
Mr. K. K. Naik, APP for Respondent - State.
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 08 MARCH 2024

PRONOUNCED ON : 13 MARCH 2024

ORDER :

1. Original complainant, who intends to prefer appeal against judgment and order passed by learned District Judge-2, Amalner in Criminal Appeal No.06 of 2020, acquitting respondent from offence punishable under section 138 of Negotiable Instruments Act, has moved instant leave application.

2. Learned counsel for applicant submits that, hand loan was given to the accused to enable him to make up the loss caused by him by misappropriation of bank funds. He had assured to repay the said hand loan and towards it he issued cheque, but it was dishonoured. Therefore, complaint was instituted. All necessary ingredients for attracting section 138 of N.I. Act were available and therefore, there was strong presumption available under section 139 of N.I. Act, learned trial court correctly recorded the guilt. Accused approached learned District Court by filing appeal, but the Appellate Court overturned the conviction by allowing appeal by reaching to wrong conclusion. There is proper appreciation of both, evidence as well as law, and therefore, instant leave is sought to prefer appeal against the said judgment and order passed by the learned District Judge-2, Amalner, dated 06.07.2023 passed in Criminal Appeal No. 6 of 2020.

3. Learned counsel for respondent accused would submit that, as learned Judicial Magistrate First Class has not correctly appreciated evidence as well as legal position, appeal was preferred. Learned District Judge on complete appreciation of evidence as well as law found that conviction recorded is improper. That, complainant had failed to prove his case. That, on complete re-appreciation, learned District Judge has reached to a correct

finding that complainant was not financially sound to extend huge loan. Complainant having failed to establish his case beyond reasonable doubt, judgment of conviction was rightly set aside and hence he prays to refuse the leave.

4. After considering the submissions advanced by each of the side, it seems that, S.C.C. No.747 of 2015 was filed by present applicant, alleging that, due to cordial friendly relations and due to financial crisis faced by accused, he extended hand loan of Rs.16,00,000/- to the complainant and towards its repayment, he issued three cheques of amount of Rs.6,00,000/-, Rs.5,00,000/- and Rs.500,000/- respectively, but the same were dishonoured.

5. In trial court defence taken by accused was that, he had borrowed hand loan of Rs.50,000/- from the complainant and had handed over signed blank cheques as collateral security. He also questioned on financial capacity of complainant to extend such huge loan and he also denied the receipt of statutory demand notice. After appreciating the evidence, learned Judicial Magistrate First Class reached to a finding that, complainant had made out a case for offence under section 138 of N.I. Act and convicted the accused by judgment and order dated 10.01.2020.

6. It seems that, said judgment of conviction was carried forward by accused by filing Criminal Appeal No. 06 of 2020 before learned District Judge, Amalner, who seems to have held that, conclusion reached at by learned trial court is improper. There is no proper appreciation of evidence and wrong conclusion has been reached at, and therefore, allowed the appeal by setting aside the judgment of learned Judicial Magistrate First Class.

7. Thus, here it seems that, two judicial forums on same set of evidence and defence has reached to two diametrically opposite opinions. Therefore, in the opinion of this court, complete re-appreciation is necessary and that can be only done on full-fledged appeal. Therefore, this itself is a good ground for granting leave. Hence, I proceed to pass the following order :-

ORDER

- (i) Application stands allowed.
- (ii) Leave is granted to file Appeal.
- (iii) Registry to register the Appeal.
- (iv) Appeal stands **admitted**.
- (v) Call record and proceedings.

(ABHAY S. WAGHWASE, J.)