



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO.190 OF 2018

Renushankar S/o. Tulshiram Shirale,
Age : 37 years, Occu. : Business,
R/o. Bhokardan, Tq. Bhokardan,
Dist. Jalna.

... Applicant.

Versus

Sharad S/o. Narsingh Rao Deshmukh,
Age : 40 years, Occu. : Service,
R/o. Sutar Galli, Patoda, Tq. Patoda,
District : Beed.

... Respondent.

...
Mr. Swapnil S. Patunkar, Advocate for Applicant
Mr. S. S. Bora, Advocate for Respondent
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 16th JANUARY, 2024

PRONOUNCED ON : 19th JANUARY, 2024

ORDER :

1. Original complainant, who had instituted proceedings under section 138 of Negotiable Instruments Act against respondent, is aggrieved by the acquittal of accused respondent, and is hereby seeking leave to question the judgment and order of acquittal passed by learned Judicial Magistrate First Class, Bhokardan dated 13.08.2018 in SCC No. 30 of 2016.

2. Learned counsel for applicant would submit that, there were friendly relations between complainant and accused. Accused had borrowed hand loan for constructing marriage hall.

In the light of long and close acquaintance, complainant raised amount and paid it to accused. Some of the amount was by way of transfer and some was by way of cash. On persistent demand, accused issued cheque, but it was dishonoured. Learned counsel submitted that, issuance of cheque as well as signature over it has not been denied. Even receipt of legal notice has not been denied, and therefore, legal presumption came into play. Accused failed to rebut the presumption, but, still the learned trial court acquitted the accused without assigning proper and sound reasons and hence he prays for leave to file appeal.

3. In answer to above, learned counsel for respondent would point out that, complainant failed to establish extension of loan. That, moreover, complainant had no financial capacity to extend such huge loan. He had not demonstrated his own source to accept his case of lending loan to the tune of Rs.6,10,000/-. There being no full proof case made out, learned trial court rightly acquitted the accused and hence he prays to dismiss the application.

4. After considering the submissions on both sides and on going through the papers as well as impugned judgment, it seems that present applicant had set up a case of commission of offence

under section 138 of N.I. Act, alleging obtainment of loan for construction purpose and issuing cheque towards repayment of hand loan, however, said cheque was returned dishonoured.

5. *Prima facie*, on going through the evidence, it seems that, in support of his own case, complainant had adduced evidence of himself as CW1 and CW2 Sanjay, CW3 Vipin, CW4 Baban and CW5 Ashok along with documentary evidence. It is also further *prima facie* emerging that, an amount of Rs. 4,02,000/- was said to be raised by the complainant. He has named one Ramesh Sarsare to be his relative from whom amount was raised, but he is not examined. In evidence before court while under cross he has answered that, he raised amount by carrying out sale transaction, but no plea to this extent was raised in the original complaint. His evidence CW3 Vipin deposed about giving amount to complainant, but complainant has not named him for borrowing the amount. Even said CW3 Vipin merely lead his examination-in-chief, but did not make him available for cross. Likewise, CW5 Ashok, who deposed for the first time in the court about transaction taking place in his presence is not named by complainant himself for being present at the time of extension of loan.

Even no details of his own business are brought on

record.

6. Consequently, there is weak evidence about raising cash and handing it over to accused, the primary burden of proving legally enforceable debt does not seem to have been discharged. Therefore, there is no possibility of any success in appeal. No case being made out for grant of leave, I proceed to pass following order : -

ORDER

- (i) The application stands rejected.

(ABHAY S. WAGHWASE, J.)