



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO. 93 OF 2022

Piyush Sugar and Agro Industries,
Pvt. Ltd., Walki, Tal. Dist. Ahmednagar,
Through Authorized Person
Ramesh Namdeo Gaikwad,
Aged : 48 years, Occu. : Service,
R/o. Walki, Tq. & Dist. Ahmednagar.

... Appellant
(Orig. Complainant)

Versus

1. Pathan Kacharu Noorkha,
Age : 60 years, Occu. : Business,
R/o. At Tandulwadi, Post. Gangapur,
Dist. Aurangabad.

(Orig. Accused)

2. The State of Maharashtra,
Through its Nagar Taluka Police Station,
Bit Walki, Tq. & Dist. Ahmednagar

... Respondents.

...
Mr. U. L. Momale, Advocate for Appellant.
Mr. Sudheer R. Zambare, Advocate for Respondent No.1.
Mrs. Ashlesha Deshmukh, APP for Respondent No.2 - State.
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 15th APRIL, 2024

PRONOUNCED ON : 19th APRIL, 2024

ORDER :

1. This is an application for leave to question the judgment and order of acquittal passed by learned Additional Chief Judicial Magistrate, (Court No.10), Ahmednagar in proceedings under section 138 of Negotiable Instrument Act bearing S.C.C. No. 2282 of 2016, dated 25.07.2022.

2. According to learned counsel, complainant is a private sugar factory. They were in need of labours for cutting sugarcane as well as transporting it. Respondent accused was conducting said business and therefore, agreement was entered into and advance amount was paid from time to time. The accused respondent failed to meet the terms of agreement and on demand of due amount, he issued cheque, but it was dishonoured, therefore, above proceedings were instituted.

3. Learned counsel pointed out that, learned trial court dismissed the complaint on technical grounds that there was no legally enforceable debt and secondly complainant was not authorized to file complaint, moreover, resolution was not proved. According to learned counsel, there is erroneous approach and appreciation of evidence and law. Hence, appeal is decided to be filed and he prays for leave.

4. In answer to above, learned counsel for respondent accused pointed out that, complainant failed to prove legally enforceable debt. That, there was no authorization to complainant to file complaint. Equally there was no resolution in his favour. Therefore, it is his submission that, all essentials for attracting offence were patently missing and hence trial court committed no error and so he prays to refuse the leave.

5. Perused the papers. It appears that, complainant is a registered sugar factory. Complainant set up a case that, they were in need of labours for cutting and transporting sugarcane and accused being involved in such services. Complainant entered into an agreement with accused and on request of accused, complainant time to time paid Rs,12,00,000/- as an advance. That, it was agreed between them that amount of advance would be deducted from the future bills of accused towards his work. Specific case of complainant is that accused failed to act as per the agreement and therefore, considering the actual work done, an amount of Rs.6,81,027/- was due towards the accused. Towards the said amount, he issued cheque, but the same was dishonoured.

6. Defence taken by accused is that, there were no such dues. That, cheque issued was towards security. His case is that, he took advance of only Rs.4,00,000/- and the same was adjusted for the work done by him. Accused, who, questioned the validity and authorization of person, who instituted above proceedings.

7. Complaint seems to be at the instance of one Ramrao Yeslote. However, mere photocopy of resolution produced on record is not the original. Further, the resolution placed on record

also does not bear signatures of board of directors as well as details of the resolution authorizing Yeslote to contest the proceedings. Therefore, resolution Exh.47 has apparently come under shadow of doubt. When company is represented, there has to be proper authorization as well as resolution and the same is missing in the case in hand.

8. As regards to legally enforceable debt is concerned, it is noticed that, documents Exhs.50 to 54, though marked, its contents are not got proved to establish legally enforceable debt. Further, formal averments are made in the complaint that, time to time advances were paid to the accused for the work. But, details are not provided exactly when and for which work such advances are allegedly paid. Simpliciter averment that, advances accumulated to the tune of Rs.12,00,000/- and after making deductions for work done by accused amount of Rs.6,81,027/- to be remained in due, itself is not sufficient to fix liability or to hold legally enforceable debt at the end of accused.

9. Specific details by way of documentary evidence, were expected from complainant side in view of transactions being of monetary in nature.

10. Prima facie, there was no authorization or proper resolution and secondly, for above reasons, even legally enforceable debt has not been cogently and firmly established so as to attract rigors of 138 of N.I. Act.

11. Perused the judgment sought to be challenged. No illegality or perversity is brought to the notice, at this stage, to hold existence of a good ground to be dealt in appeal. Hence, no good reason for leave being made out, relief as prayed cannot be granted. Accordingly I proceed to pass the following order :-

ORDER

The application stands rejected.

(ABHAY S. WAGHWASE, J.)