IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO.206 OF 2018

Meena Subhash Randhe,
Age : 45 years, Occu. : Business,
R/o. N-12, Bharatmata Nagar,
Hudco, Aurangabad. **... Applicant.**

Versus

Dhakne Dnyandeo Kaduba,
Age : Major, Occu. : Business,
R/o. N-11, E-10/3, Mayur Nagar,
Shopping Center Road,
Hudco, Aurangabad and Chandoi Ekko,
Tq. Bhokardhan, Dist. Jalna. **... Respondent**

...
Mr. Ravindra A. Kolte, Advocate for Applicant.
Ms. Vaishali Kalyankar h/f. Mr. Sushant B. Choudhari, Advocate for Respondent.
...

CORAM : ABHAY S. WAGHWASE, J.
RESERVED ON : 22nd FEBRUARY, 2024
PRONOUNCED ON : 26th FEBRUARY, 2024

ORDER :

1. Dissatisfied by the judgment and order of acquittal passed by learned 11th Judicial Magistrate First Class, Aurangabad in S.C.C. No. 7619 of 2015 from offence under section 138 of Negotiable Instruments Act, 1881, original complainant has preferred instant application seeking leave to file appeal.

2. Learned counsel for applicant would submit that,

applicant is original complainant, who had extended hand loan of Rs.2,00,000/- to the accused out of friendly relations. Towards repayment of the same, accused issued cheque. It was dishonoured and thereafter, even when notice was issued and received, cheque amount was not repaid and hence complaint was filed. It is pointed out that, issuance of cheque and signature over it has not been disputed by accused. Therefore, there was strong presumption. However, false defence of misuse of cheque given by way of security is put-forth and is unfortunately accepted by learned trial Judge. That, there is no submission rebuttal, but still learned trial court has dismissed the complaint. That, there is good case on merits in appeal and hence he seeks leave.

3. On the other hand, learned counsel for respondent accused would submit that, loan transaction itself has not been established. There was no direct transaction between accused and complainant. Rather, there was loan transaction between accused and son of complainant, the same was also repaid of which there is admission by very son of complainant. Cheque in that loan is misused and there was no hand loan as alleged by complainant from her by accused. That, learned trial court has considered all aspects in detail and has thereafter dismissed the complaint and therefore he seeks to refuse the leave.

4. In the light of above submissions, complaint, documents and record is visited. *Prima facie,* complainant seems to have put a case that, because of relation of accused with her son, on account of financial crises, she gave Rs.2,00,000/-, 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 her own evidence, complainant has placed on record cheque in question, bank memo and notice etc.

6. Specific defence raised by accused is that there was no loan transaction with complainant, rather it was with her son and his loan is repaid.

7. If cross of complainant is visited, she is unable to state exact date on which she extended loan as she answered that she gave loan on 1st or 2nd September, 2015. There are questions posed to her regarding loan transaction with her son to the tune of Rs.1,10,000/-, but she claims to be unaware and she has not denied it. In cross she is asked about three cheques obtained by her son in

loan transaction between him and accused. Specific cheque numbers, dates, amounts are also brought to her notice, but she has answered that she is unaware of the same.

8. At Exh.36 PW2 complainant's son namely Kiran has also adduced evidence and in his cross he has admitted hand loan transaction between him and accused to the tune of Rs.1,10,000/-.

9. Accused has also adduced his own evidence at Exh.49.

10. Therefore, taking above material into consideration, here, complainant seems to have utterly failed in independently establishing loan transaction with accused. On the other hand, *prima facie,* it seems that there is not mere defence, but there is specific cross of complainant as well as very son of complainant with whom there was distinct transaction.

11. Therefore, it has been probabilized about possibility of misuse of cheque issued in said transaction with son. *Prima facie*, when complainant failed to demonstrate her own source so as to lend Rs.2,00,000/- and she is unable to establish exact date of transaction, no fault can be found in the appreciation of learned trial Judge. Hence, I proceed to pass the following order :-

ORDER

The application stands rejected.

(ABHAY S. WAGHWASE, J.)