



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT PARTY NO.116 OF 2022

Priyadarshani Milk Processing Private Ltd.,
M-44, Near Wakhar Mahamandal,
M.I.D.C. Ahmednagar
Through its authorised signatory,
Yogesh Pralhad Shinde,
Age : 29 years, Occu. : Service,
R/o. MIDC, Ahmednagar.

... Applicant.
(Orig. Complainant)

Versus

Shivaji Prabhu Ghadge,
Age : 57 years, Occu. : Agri. & Milk Business,
R/o. At Post Sapatane Bhosare,
Taluka Madha, District Solapur.

... Respondent.
(Orig. Accused)

...
Mr. Deepak D. Choudhari, Advocate for Applicant.
Mr. Sudarshan J. Salunke, Advocate for Respondent.
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 25th JANUARY, 2024

PRONOUNCED ON : 01st FEBRUARY, 2024

ORDER :

1. As a result of acquittal of respondent from offence under section 138 of Negotiable Instruments Act, 1881 vide judgment and order passed on 21.09.2022 in S.C.C. No.3464 of 2016 by learned Additional Chief Judicial Magistrate, Ahmednagar, original complainant has pressed into service instant leave application to prefer appeal.

2. In support of relief, learned counsel for applicant would

submit that, transaction between applicant and accused respondent is not disputed. That, there is no dispute about dues towards respondent and therefore, there was no issue about legally enforceable debt. He pointed out that, even learned trial court had drawn initial presumption in favour of complainant by invoking section 118 and 139 of N.I. Act. However, accused is acquitted on the sole ground of want of jurisdiction. It is submitted that, learned trial Court had on earlier occasion returned the complaint to be presented before proper court. That, except defence of misuse of cheque, there was no serious challenge in trial court, however, learned trial court has acquitted the accused and according to learned counsel he has a good case on merits in appeal and so he seeks leave.

3. Supporting the findings and judgments, learned counsel for accused would submit that, applicant failed to make out the case by establishing financial transaction or about legally enforceable debt at the end of accused. There was nothing in support of the averments raised in the complaint. Cheque which was given by way of security has been misused, even when there were no legal dues. That, furthermore, earlier complaint was returned for presentation before proper court, however again same forum was chosen and therefore learned trial court has committed

no error in dismissing the complaint and so he prays to dismiss the application.

4. After considering the submissions of both sides, it seems that the present applicant lodged complaint by invoking section 138 of N.I. Act, contending that, complainant is in business of sale of milk. Case is set up that, accused had borrowed advance amount of Rs.14,00,000/- by way of advance for conducting milk business and accused allegedly assured to deduct the advance from the bill of the milk supplied. It is specifically averred that, applicant abruptly stopped the supply and therefore after deducting the amount of milk Rs.5,76,687/- was due towards the accused and he issued cheque for the same, but on presentation it was dishonoured and hence the proceedings.

5. Record shows that, on 19.07.2017, learned trial court issued process against the accused. Trial seems to have commenced, during which complainant adduced his evidence by way of affidavit and was cross examined by accused. Learned trial court seems to have on appreciation of oral and documentary evidence by its order dated 21.09.2022 acquitted the accused, holding that, complainant failed to prove legally enforceable debt.

6. On hearing each of the side and on *prima facie* going

through the record and from the observations of learned trial Judge, in para 13 of the judgment, it is emerging that, complainant failed to establish amount of Rs.14,00,000/- being taken by way of advance and further failed to prove that amount towards supply of milk towards repayment of advance and also failed to prove by adducing any evidence to show that at the time of complaint an amount of Rs.5,76,867/- was due towards accused and therefore it is legally enforceable debt.

7. It further transpires that, previously S.T.C. No. 1055 of 2014 was instituted by applicant complainant, but said complaint seems to have been returned for presentation before proper court. However, second attempt seems to have been taken, but there is no cogent and reliable evidence in support of alleged transaction of Rs.14,00,000/-, repayment towards some amount and dues of cheque amount to be remaining at the end of accused. Hence though initial presumption has been drawn, when complainant failed to prove legally enforceable debt, no fault can be found in the finding of trial court. No case being made out for grant of leave, I proceed to pass following order :-

ORDER

The application stands rejected.

(ABHAY S. WAGHWASE, J.)