



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO.232 OF 2018

Dr. Rohan S/o. Purushottam Agrawal,
Age : 34 years, Occu. : Dentist,
R/o. Main Road, Shirpur,
Tq. Shirpur, Dist. Dhule.

... Applicant.
(Orig. Complainant)

Versus

1. Pramod S/o. Radhesham Sharma,
Age : 44 years, Occu. : Business,
R/o. Dalalnagar, Plot No.9, Karwand
Area, Shirpur, Dist. Dhule.

R/o. Krishna Snack, Amalner Road,
Faghne Tal & Dist. Dhule.

... (Orig. Accused)

2. The State of Maharashtra,
Through Police Station Officer,
Police Station Shirpur,
Tq. Shirpur, Dist. Dhule.

... Respondents.

...

Mr. Prakash S. Paranjape, Advocate for Applicant.
Ms. Shilpa Aurangabadkar h/f. Mr. Satej S. Jadhav, Advocate for
Respondent No.1.
Mrs. Chaitali Chaudhari - Kutti, APP for Respondent No.2.

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 16th APRIL, 2024

PRONOUNCED ON : 22nd APRIL, 2024

ORDER :

1. Original complainant, is instituted proceedings under
section 138 of Negotiable Instruments Act, is dissatisfied by the
judgment and order of acquittal of respondent, passed by the

Judicial Magistrate First Class, Court No.2, Shirpur in S.T.C.C. No.1408 of 2014.

2. It is submitted that, proceedings bearing S.T.C.C. No.1408 of 2014 was filed by present applicant a medical practitioner on account of dishonour of cheque issued and handed over by respondent towards repayment of amount taken for business. That, in view of cordial relations and acquaintance, request of accused was complied by giving him loan of Rs.2,15,000/-. Learned counsel invited attention of this court to the order of trial court dated 27.02.2015 and submitted that on due satisfaction trial court called upon accused to rebut the presumption. It is pointed out that, accused did not appear and contest the proceedings as such learned counsel submits that there is no denial or refusal of issuance of cheque and signature over it. Therefore, initial presumption was in favour of complainant. The same stood under rebutted. But, still learned trial court acquitted accused, holding that, complainant failed to prove transaction of handing over money. That, there is erroneous approach in appreciation as well as drawing conclusion. There is a good case on merits in appeal and so learned counsel prays to grant leave.

3. Above application is strongly opposed by learned

counsel for respondent accused pointing out that, complainant failed to establish when there was so called money transaction of demand and issuance of loan. Learned counsel took this court through the contents of complainant and would submit that, exact details of transaction are patently missing from the complaint. She would point out that, it is the duty of complainant to make out the case regarding legally enforceable debt. He precisely failed to do that and therefore learned trial court committed no error in acquitting accused respondent and hence she prays to refuse leave by rejecting application.

4. Perused the documents. Complainant a medical practitioner instituted a complaint, alleging that, there were cordial relations between him and accused. In the month of August and September, accused approached him as he was in dire need of money for business. On request, complainant handed over Rs.2,15,000/- to the accused. He assured to repay and subsequently, issued cheque, but the same was dishonoured. Hence the action.

5. It seems that, accused did not personally appear and contest the proceedings or lead any evidence. On going through the judgment, it seems that, after hearing both sides, the reasoning are

assigned by trial court from paragraph no.21 onward. In said paragraph, learned trial court has held that taking into account evidence of complainant and cross faced by him, it is emerging that complainant is a dentist. That, complainant admits that he maintained records of all financial transactions and files Income Tax Returns. In para 23, learned trial court has held that, complainant failed to establish the foundational fact regarding availability of funds with him. Question is posed whether complainant has proved *prima facie* advancement of amount to accused and court went on to answer that, when exactly money was advanced has not been shown as in the complaint it is merely stated that, money was advanced in the month of August and September and that neither exact year nor exact month and date, is stated by the complainant.

6. Therefore, with such material on record, complaint itself is obscure. It is a money transaction and therefore, it was incumbent upon complainant to pinpoint and specify exact date of handing over amount. Moreover, amount is said to be to the tune of Rs.2,00,000/- and odd amount.

7. Therefore, for above reasons, when complainant could not establish very foundational fact to avail the further benefit

under sections 118 and 139 of N. I. Act, no fault can be found in the findings reached at by the learned trial court. No good ground is made to grant leave as prayed. Hence, I proceed to pass the following order :

ORDER

The application is hereby rejected.

(ABHAY S. WAGHWASE, J.)