



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO.233 OF 2018

Trinity Mhalsa Durga Sales and Services,
C-220, Waluj, MIDC Aurangabad,
Through its Manager H.R.,
Mr. Sanjay Devidasrao Bedekar,
Age : 47 years, Occupation : Service,
R/o. C-220, M.I.D.C., Waluj, Aurangabad,
Taluka and District Aurangabad

... Applicant
[Orig. Complainant]

Versus

1. Pravraj Gopalrao Shirsath,
Age : 30 years, Occu. : Service,
R/o. Flat No.2, Om Shivay Apartment,
Ranpise Nagar, Akola, Taluka and District Akola.

2. The State of Maharashtra,
Through Police Station Akola,
Taluka and District Akola.

... Respondents.
[R. No.1 Orig. Accused]

...
Mr. H. C. Puse h/f. Mr. R. R. Imale, Advocate for Applicant.
Mr. S. M. Ganachari, APP for Respondent – State.
Mr. Panjak A. Bharat, Advocate for Respondent No.2.
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 01 MARCH 2024

PRONOUNCED ON : 06 MARCH 2024

ORDER :

1. Dissatisfied by the judgment and order of acquittal passed by learned Judicial Magistrate First Class, Court No.7, Aurangabad, dated 10.09.2018 in S.C.C. No.6895 of 2015, original complainant has preferred instant application seeking leave to file appeal.

2. It is submitted that, learned trial court has not considered and appreciated the evidence of complainant as required under law. That, transaction was proved, liability was also proved and even issuance of cheque and signature over it has not been disputed by accused, and therefore, there was strong presumption available under sections 118 and 139 of Negotiable Instruments Act, 1881. That, there was no good defence by accused. There was no rebuttal of the presumption, but still learned trial court has acquitted the accused by arriving at erroneous conclusion. According to him, there is a good case on merits and therefore he seeks leave.

3. Learned counsel for respondent no.2 supported the judgment and order by pointing out that, complainant could not establish very legally enforceable debt at the end of accused. Therefore, learned trial court has not committed any error whatsoever in rejecting the complaint and acquitting the accused. He therefore submits that, no case being made out, leave be refused.

4. Proceedings under section 138 of N.I. Act at the end of present applicant was instituted before learned trial Judge on the premise that, complainant is a company. Accused was from staff

i.e. Store Assistant. That, during rendering service, accused had misappropriated the amount and after it was so revealed in the audit, accused confessed, apologized and agreed to repay by giving it in writing on stamp paper. He paid Rs.1,20,000/- by cash and for remaining amount of Rs.80,000/- he issued cheque, but on its presentation it was dishonoured and when after notice cheque amount was not paid, proceedings under N.I. Act were instituted. Complainant examined himself at Exh.23 and also adduced evidence of two witnesses.

5. Defence of accused is that, he did not indulge in any fraud or misappropriation as alleged. It is his plea that at the time of joining, blank cheques were obtained from him and the same are misused.

6. On going through the judgment under challenge, it appears that, in paragraph 18 of the judgment, learned trial Court has held that, accused has admitted that cheque was dishonoured for the reason "funds insufficient". Evidence of Manager as well as letter (Exh.61) is also taken into account by learned trial Court to hold that there is dishonour of cheque. Even case of complainant about issuance of demand notice is held to be proved. However, learned trial Court in paragraph 23 observed that, there is no

evidence from complainant's side to establish the very alleged misappropriation.

7. In para no. 24 of the judgment it has been held that, there is a confessional statement at Exh.56, whereby accused has alleged to have confessed the liability and had issued cheque in question. However, on analyzing Exh.56, learned trial Court has disbelieved the complainant's case that Rs.80,000/- were outstanding and it has been observed that, there is mismatch between amount due towards accused and amount reflected on the cheque.

8. Further, on going through the judgment under challenge, it is noticed that on one hand in paragraph 23 of the judgment, learned trial Court has observed that complainant failed to prove fraud or misappropriation, but further discussions are made in para 28 and 29 and noting some inconsistencies and discrepancies therein, learned trial Court has raised doubt about existence of legally enforceable debt and finally has acquitted the accused.

9. In the light of above observations prima facie appearing in the judgment, considering the nature of proceeding, it

was expected from learned trial Judge to ascertain whether necessary ingredients for section 138 of N.I. Act were at all made out and findings and conclusions were expected to be confined only to that extent. However, that does not seem to have happened. Therefore there is a case, which is required to be dealt in appeal. Hence, leave as prayed deserves to be granted. Hence, I proceed to pass the following order :-

ORDER

- (i) Application stands allowed.
- (ii) Leave is granted to file Appeal.
- (iii) Registry to register the Appeal.
- (iv) Appeal stands **admitted**.
- (v) Call record and proceedings.

(ABHAY S. WAGHWASE, J.)