IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO.234 OF 2018

Shri Sant Nagebaba Multistate Co-op.
Urban Credit Society Ltd.
Kapad Bazar, Ahmednagar,
Through its Branch Manager **... Applicant**
(Orig. Complainant)

Versus

Shivaji Bhagwan Tandale,
Age : 36 years, Occu. : Driver,
R/o. Deolali-Panachi, Tq. Ashti,
Dist. Beed. **... Respondent**
(Orig. Accused)

...

Mr. V. S. Bedre, Advocate for Applicant
Mr. V. P. Latange, Advocate for Respondent

...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 19th JANUARY, 2024
PRONOUNCED ON : 25th JANUARY, 2024

ORDER :

1. Instant proceeding is for grant of leave to file appeal against judgment and order of acquittal passed by learned Judicial Magistrate First Class, Ahmednagar, dated 06.10.2018 in S.C.C. No.436 of 2014, acquitting respondent from offence punishable under section 138 of Negotiable Instrument Act, 1881.

2. It is pointed out that, present applicant is a Multi-State co-operative society involved in providing financial assistance to its members. That, accordingly vehicle loan was extended to

respondent on his application and he had executed promissory note. There was default in repayment of loan and arrears, and towards it a cheque of Rs.1,00,000/- was issued, but it was on presentation, returned dishonoured, and therefore, after statutory notice, proceedings under section 138 of N.I. Act were initiated.

3. It is pointed out that, transaction of loan was not disputed nor the amount due is denied. That, attempt to seek discharge by applicant in the trial court went futile. However, in spite of all ingredients for attracting the offence being made out and if there was legally enforceable debt, still learned trial Judge has acquitted accused. He pointed out that, even initial presumption had been drawn by the learned trial Judge, but, still accused is acquitted. That, there is a good case on merits in appeal and so he prays for leave.

4. In answer to above, learned counsel for respondent accused would submit that, there was no legally enforceable debt. That, no notice has been received. Therefore, according to him, learned trial court committed no error in acquitting the accused.

5. After hearing both sides, it seems that, after initiating proceedings under section 138 of N.I. Act, applicant-complainant

adduced his own evidence along with documentary evidence, like resolution, cheque, bank memo, copy of demand notice, acknowledgment, loan extract and loan agreement.

6. After considering the submissions advanced by both sides and going through the record and impugned judgment, it seems that, there is no dispute regarding loan being extended by present applicant for vehicle loan. There is also no dispute that loan was to be repaid by way of installments. Each of the side have put up their respective cases to that extent. *Prima facie*, it seems that, an agreement was executed at the time of loan. Learned trial court seems to have observed in paragraph 11 of the judgment that, presumption available under N.I. Act is in favour of complainant. Specific defence was that, there was no legally enforceable debt at the time of issuing cheque and secondly, loan was to be repaid in 46 installments of Rs.11,000/- each. Exh.33 which is an agreement *prima facie* shows it to be conspicuously silent about duration of repayment. Even the date on which there would be repayment of loan, is not appearing. Therefore, there being patent ambiguities in the very agreement, in which there are no details about tenor of repayment, it has not been demonstrated that there was legally enforceable debt at the end of accused. Exh.32 did not tally with the case of complainant.

Resultantly, though initial presumption arose, it having not been established that on the date of cheque, there was legally enforceable debt to the tune of Rs.1,00,000/- due, case of complainant seems to have been rejected.

7. No case is made out on merit before this Court so as to grant relief as prayed. Hence, application stands rejected.

(ABHAY S. WAGHWASE, J.)

Tandale