



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY
NO. 124 OF 2022**

Pralhad s/o Dnyanoba Pimpale
Age: 54 years, Occu.: Agril.,
R/o. Ukkalgaon, Tq.Manwat,
Dist.Parbhani.

.....Applicant
(Orig. complainant)

Versus

Mahadeo s/o Sakharam Gaikwad
Age: 58 years, Occu.: Service,
R/o. Kekarjawala, Tq.Manwat,
Dist.Parbhani.

.....Respondent
(Orig. Accused)

.....
Advocate for Applicant : Mr. Vivekanand B. Deshmukh
APP for Respondent : Mr. Bhagwat Achutrao Shinde
.....

CORAM : ABHAY S. WAGHWASE, J.

DATE : 18 JANUARY, 2024

ORDER :

1. Applicant seeks leave to file appeal against judgment and order passed by the learned Judicial Magistrate, First Class, Manwat dated 20-10-2022 in S.C.C. No.26 of 2018 acquitting respondent from offence under Section 138 of the Negotiable Instruments Act (for short “the NI Act”).

2. According to learned counsel for applicant, out of long acquaintance with accused, hand loan of Rs.1,00,000/- was extended which was agreed to be repaid. After persistent demand, accused issued cheque of only Rs.80,000/- and on its presentation, it was returned dishonoured with remark “funds insufficient” and thereafter, statutory notice was despatched, but accused refused to accept and therefore, proceedings under Section 138 of the NI Act were initiated. It is submitted that inspite of availability of all necessary ingredients for attracting offence under Section 138 of the NI Act, the learned trial Court has acquitted accused simplicitor on the ground that complainant has not given date of the cheque. Therefore, according to him, mere for want of details, complaint has been rejected of which benefit went to the accused. There is a good case in appeal and so he seeks leave.

3. Learned Counsel for respondent would submit that complainant failed to make out a case. His specific defence is that cheque in question was handed over to one Balasaheb Tukaram Kale as a surety for raising some loan, but in collusion with complainant false complaint has been filed.

4. The primary question is whether complainant has established that the instrument allegedly handed down by accused was towards repayment of legally enforceable debt existing at the time of depositing the cheque. Therefore, it is expected of complainant to make out a full-proof case by giving specific particulars regarding transaction, amount due, date of cheque etc.

5. On *prima facie* going through the evidence adduced before the trial Court, it seems that there is no documentary proof except bare words about accused obtaining hand loan. When was the loan extended and when it was agreed to be repaid is not clarified. Mere statement is made that after eight days after demand loan was given, but there is admission in cross-examination about extending loan in September 2017.

6. It seems that there is no evidence on behalf of complainant regarding his own source of income to accept his case that he extended loan of Rs.1,00,000/-. Resultantly in absence of particulars or necessary details regarding extension of loan, the very transaction comes under shadow of doubt.

Therefore, as case so put-forth in trial Court was not

substantiated, learned trial Judge committed no error in acquitting the accused. No good ground is made out before this Court so as to consider and grant leave to file appeal. Hence, I proceed to pass following order :

ORDER

Application for Leave to Appeal by Private Party
No.124 of 2022 is rejected.

(ABHAY S. WAGHWASE)
JUDGE