



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

**APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY
NO. 184 OF 2019**

Md. Abdul Mufeed Abdul Latif
Age: 49 years, Occu.: Business,
R/o. Gadipura, Nanded,
Tq. & Dist. Nanded.

..Applicant

Versus

Mr.Harpalsingh @ Pali Harchandrasingh Vendil
Age: 48 years, Occu.: Business,
R/o. Omsai Apartment, Flat No.204,
Bhagyanagar, Nanded,
Tq. and Dist.Nanded.
Presently Residing at
Mahaluxmi Complex, Baba Deepsingh Nagar,
Near Ganraj Nagar, Nanded,
Tq. and Dist.Nanded.

..Respondent
(Accused)

.....
Advocate for Appellant : Mr.G.R. Syed
Advocate for Respondent : Ms.Rani Bora h/f. Mr.S.S.Bora

.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 04 MARCH, 2024

PRONOUNCED ON : 06 MARCH, 2024

ORDER :

1. On account of acquittal of respondent from offence under Section 138 of the Negotiable Instruments Act (NI Act), original complainant is seeking leave to question said acquittal dated 09-09-2019 passed in SCC No. 937 of 2010.

2. According to learned Counsel for the applicant, out of friendly relation and due to financial need, hand-loan was given to accused to the tune of Rs.1,80,000/-. That accused issued cheque towards repayment, but it was dishonoured and therefore, proceedings under NI Act was instituted. Learned Counsel pointed out that in the trial Court, issuance of cheque is not denied nor the signature over it is denied and therefore, there is strong presumption. However, according to learned Counsel, the learned trial Court has acquitted accused on the ground that there is no legally enforceable debt, there is some overwriting on the cheque and there is no cheque number mentioned in the legal notice. According the learned Counsel, there is improper appreciation of evidence and law and there is a good case on merits and so he seeks leave.

3. Learned Counsel for the accused submitted that at the outset complainant failed to prove that there was legally enforceable debt. There was no evidence about very income of accused to extend hand-loan to the tune of Rs.1,80,000/-. Further there was overwriting on the cheque and that notice is silent about the cheque number which is alleged to be dishonoured. Therefore, it is pointed out that there are several crucial aspects, which are doubtful and therefore, learned trial Court has rightly acquitted respondent and therefore, she prays to refuse leave.

4. Proceedings under Section 138 of the NI Act seems to be instituted

on account of dishonour of cheque bearing no.005582 to the tune of Rs.1,80,000/-. It seems that learned trial Court has drawn initial presumption available under Sections 118 and 139 of the NI Act.

5. Defence of accused is that there was no legally enforceable debt and moreover, there is overwriting on the cheque exh.34, which is not countersigned. Even legal notice does not disclose the cheque number. Therefore, *prima facie*, it seems that there is no independent evidence about extension of hand-loan to the tune of Rs.1,80,000/-. It is expected of the complainant at the threshold to establish legally enforceable debt. There are vital admissions by the complainant while he was cross-examined regarding accused to be also a businessman in Petrol Pump and Property. Therefore, the aspect of financial crises of respondent accused alleged in the complaint is not substantiated. Moreover, it seems that over exh.34, which is a cheque in question, there is overwriting. Such overwriting, which is admittedly not countersigned, creates doubt about the genuineness of the cheque in question. Therefore, though there is issuance of cheque and though, there is no denial of signature over it, when complainant fails to establish legally enforceable debt by adducing cogent and reliable evidence, necessary ingredients of Section 138 cannot be said to be available. Even above stated reasons of overwriting, failure to mention cheque number in legal notice further contributes to the creditworthiness of the instrument. Therefore, *prima facie*, there is no

good ground made out to grant leave. Accordingly, I proceed to pass following order :

ORDER

The application stands rejected.

(ABHAY S. WAGHWASE)
JUDGE

SPT