

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO.260 OF 2018

M/s. Pankaj Traders Through its
Proprietor :
Laxminarayan Bankatlal Ladhha,
Age : 66 years, Occu. : Business,
R/o. Ward No.1, Vyankatesh, Syryanagar,
Shrirampur, Tq. Shrirampur, Dist. Ahmednagar.

... Applicant.
[Orig. Complainant]

Versus

1. Shrikanat Bhimrao Bugade,
Age : 52 years, Occu. : Agri.,
R/o. Shri Sant Damaji Sahakarai Sakhar
Karkhana Ltd., Mangalwedha,
Tq. Mangalwedha, Dist. Solapur.
Or,
R/o. At Post Donaj, Tq. Mangalwedha,
Dist. Solapur.
2. Ashok Shrirang Nalwade,
Age : 55 years, Occu. : Service,
R/o. Managing Director,
Shri Sant Damaji Sahakarai Sakhar
Karkhana Ltd., Mangalwedha, Tq. Mangalwedha,
Dist. Solapur.
At Present Makai Sakhar Karkhana,
Bhilarwadi Jintti, Tq. Karmala,
Dist. Solapur.

... Respondents.
[Resp.Orig. Accused]

...
Ms. Sakshi Kale h/f. Mr. A. B. Kale, Advocate for Applicant.
Mr. P. S. Shendurnikar, Advocate for Respondent Nos.1 and 2.
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 12th MARCH, 2024

PRONOUNCED ON : 18th MARCH, 2024

ORDER :

1. Vide instant application original complainant is

seeking leave to file appeal against judgment and order of acquittal dated 02.11.2018 passed by learned Judicial Magistrate First Class, Court No.1, Shrirampur in S.C.C. No. 274 of 2016, acquitting the accused from offence punishable under section 138 of Negotiable Instruments Act, 1881.

2. In support of relief, learned counsel for applicant submitted that, there was a transaction of supply of machinery. Towards repayment, cheque was issued. Same was returned dishonoured, and therefore, legal notice was dispatched and on failure to pay the cheque amount, proceedings under section 138 of N.I. Act were instituted. Learned counsel pointed out that, all necessary ingredients for attracting section 138 of N.I. Act were available. According to her, signature and dues were not disputed. Complaint was dismissed on the sole ground that company is not made party. According to her, Managing Director, who was looking after the affairs was necessary party and was so duly made. That, moreover, company was not found under Companies Act, but it was found under the Maharashtra Co-Operative Societies Act. Therefore, there is no requirement of addition of sugar factory also as a party. Consequently, it is her submission that, conclusion drawn by learned trial court being erroneous, the judgment is sought to be challenged and so she prays for leave.

3. Learned counsel for respondents accused supported the judgment of learned trial court. He invited attention of this court to the observations of the trial court, more particularly in paragraph nos. 12 to 17 of the judgment. According to him, sugar factory was also a necessary party. Sugar factory not being made party, complaint itself was not maintainable and therefore, learned trial court was justified in holding no case being made out. He also placed reliance on ruling in the case of *Aneeta Hada v. Godfather Travels and Tours Pvt. Ltd.*, AIR 2012 SC 2795 and *Hemant Mohan Agarwal v. Housing Development Finance Corporation Ltd., Mumbai*, (2020) 3 Mah. L.J. 278.

4. Heard both sides. Perused the papers. Sum and substance of the complaint i.e. S.C.C. No. 274 of 2016 is that, complainant is traders involved in supply of machinery. Material to the tune of Rs.10,95,502/- was supplied to the sugar factory of which accused nos.1 and 2 are Chairman and Managing Directors. According to complainant, cheque issued by accused was presented for realization, but the same was dishonoured and therefore necessary steps as contemplated under section 138 of N.I. Act were taken, seeking action against accused for said offence.

Defence of accused is that sugar factory an essential party is not made a necessary party.

5. The seminal question that falls for consideration of this court is whether sugar factory was at all a necessary party. Learned counsel for respondents invited attention of this court to the provisions under section 141 of N.I. Act, which deals with offences by companies.

6. The main thrust of learned counsel for applicant is that, sugar factory having being formed under Maharashtra Co-Operative Societies Act, section 141 of N.I. Act would not apply.

This court is not impressed with above submissions, primarily because there is no dispute that, sugar factory is an agro based industry, it is a profit making undertaking. It is also involved in import and export. Therefore, in the considered opinion of this court, section 141 of N.I. Act would come into play.

7. Complaint is apparently filed in individual capacity i.e. in the name of two persons, who were said to be Chairman and Managing Director (MD), respectively. Admittedly, sugar factory is not made a party.

Finding that, company is specifically not being made party, learned trial court on taking recourse to the rulings in the

case of ***A.C. Narayan v. State of Maharashtra*** (2008 (1) Mh.L.J. 236 and ***Bimal Kothari v. State of Goa and Anr.***, 2008 (2) D.C.R. 374, refused to entertain the complaint, holding that, company ought to have been arraigned by prosecution in personal capacity of accused nos.1 and 2 to be impermissible in the eyes of law.

8. Supporting the judgment of learned trial court, learned counsel for respondents accused placed on record ruling in the case of ***Aneeta Hada*** (*supra*), wherein scope and object of section 141 and 138 of N.I. Act has been dealt and discussed and it has been finally held that, for maintaining prosecution under section 141 of N.I. Act, arraigning of a company as an accused is equally imperative.

Similar views are echoed in paragraph no. 14 in the case of ***Hemant Mohan Agarwal*** (*Supra*).

9. Therefore, sugar factory specifically ought to have been made a party being juristic person. Same not having been done, learned trial court rightly observed that, accused nos.1 and 2 could not have been prosecuted in personal capacity. Settled legal position has been reiterated.

10. There is no merit so as to grant leave as prayed. No

perversity or illegality is also brought to the notice of this court so as to grant relief. Hence, following order :-

ORDER

The application stands rejected.

(ABHAY S. WAGHWASE, J.)