

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO.146 OF 2023

Sopan S/o Baburao Argade,
Age. 44 years, Occ. Agril.
R/o. Gunjalwadi, Tal. Sangamner,
Dist. Ahmednagar

... Applicant
(Orig. Complainant)

Versus

1. Rajabhau S/o Ambadas Waghmare,
Age - 25 years, Occu - Agril,
R/o. Kharadi, Tal. Sangamner,
Dist. Ahmednagar.

... Orig. Accused

2. The State of Maharashtra

... Respondents

...
Mr. K. N. Shermale, Advocate for Applicant
Mr. Manoj R. Khutwad, Advocate for Respondent No.1.
Mr. S. M. Ganachari, APP for Respondent No.2 - State.
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 15th APRIL, 2024

PRONOUNCED ON : 22nd APRIL, 2024

ORDER :

1. Original complainant, who instituted proceedings under section 138 of Negotiable Instruments Act bearing S.C.C. No. 894 of 2019 against present respondent, is keen in filing appeal against judgment and order of acquittal dated 11.09.2023 passed by Additional Chief Judicial Magistrate, Sangamner.

2. It is submitted that, complainant was in dire need of funds and so he decided to sell out tempo owned by him. Accused,

who was well acquainted with him, expressed his desire to purchase the tempo and accordingly on 14.04.2019 agreement was entered into regarding transaction of sale of tempo to the tune of Rs.2,75,000/-. Even accused made advance payment of Rs.5,000/- as earnest amount and promised to pay remaining amount of Rs.1,50,000/- on 05.05.2019 and Rs.1,20,000/- on 20.05.2019. On such agreement, complainant handed over possession of tempo to the accused. On repeated demand, accused issued cheques of Rs.1,20,000/- as well as Rs.1,50,000/- drawn on his banker, but cheques were returned dishonoured, and therefore, above complaint was filed.

3. Learned counsel for applicant pointed out that, copy of agreement entered into was the very foundation of the transaction and same was placed on record. Further, according to him, the previous owner from whom vehicle was purchased by complainant, was also examined to establish ownership of complainant. Therefore, apart from such evidence, there was documentary evidence of bank memo, statutory notice and there was sufficient evidence making out of a full proof case of commission of offence under section 138 of N.I. Act.

4. Learned counsel strenuously submitted that, there is

improper appreciation of evidence as well as law. That, in spite of accused failing to rebut the initial presumption, learned trial court has erred in holding that accused rebutted the presumption successfully. The findings are contrary to record and hence there being good case in appeal, he prays to grant leave.

In support of above contention, learned counsel placed reliance on the ruling of the Hon'ble Apex Court in the case of ***M/s Kalamani Text & Anr. Vs. P. Bala Subramanian***, Criminal Appeal No.123 of 2021 [arising out of SLP (CRI) No.1876 of 2018], ***Karikho Kri Vs. Nuney Tayang And Anr.***, Civil Appeal No.4615 of 2023 as well as order of this court in ALP No.82 of 2022 (*Ramesh S/o. Gyanu Shinde v. Mukund s/o. Onkar Ahire*).

5. Per contra, learned counsel for respondent accused supported the judgment, holding that, complainant failed to prove very ownership of vehicle and alleged transaction. It is elaborated that, unless complainant was the owner, he had no right to sell. Consequently, very transaction alleged by complainant has not been established. Hence, he submits that, when there is no legally enforceable debt, therefore, learned trial court rightly acquitted the accused and so he prays to reject the application.

6. Perused the papers. The gist of complainant's case in trial court is that, he is the owner of a tempo. However, he was in need of funds and so he decided to sell the vehicle to accused. Price of tempo is agreed to be Rs.2,75,000/-. Rs.5,000/- paid by way of earnest amount. Towards remaining amount, accused issued cheque, but the same was dishonoured.

7. Precise defence of accused is that, though there was an agreement between complainant and accused to purchase tempo, but the vehicle was not in the name of complainant and he had taken up responsibility to carryout necessary changes in the R.C. particulars. He failed to take steps. In said transaction, blank cheque handed over for raising finance for purchase of vehicle was issued and the same is misused.

8. Learned counsel for applicant has placed on record an agreement dated 14.04.2019, incorporating terms and conditions of the transaction. Issue before court is whether there was legally enforceable debt at the time of issuance of cheque in question.

It transpires that, though above transaction of vehicle was entered into on a stamp paper, it is emerging that, on the day of said transaction dated 14.04.2019, vehicle was still standing in

the name of previous owner, namely Balasaheb Raghunath Magar, from whom complainant had allegedly purchased the vehicle. No doubt, he seems to be examined by complainant as CW3. However, this witness in cross seems to be admitted that there is no evidence whatsoever regarding transaction between him and complainant. R.C. particulars admittedly stand in the name of CW3 itself. Therefore, under such circumstances, when ownership and title of vehicle is not in the name of complainant on the day and date of cheque, how said transaction between complainant and present accused can be said to be valid. Law is fairly settled that, only registered owner can carryout transaction of sale. Here, complainant has not placed on record R.C. particulars reflecting his name as owner and he having title to transact as a owner. Therefore, even in the considered opinion of this court, issue of existence of legally enforceable debt, does crop up.

9. Learned counsel for applicant sought reliance on the ruling of the Hon'ble Apex Court in the case of ***Karikho Kri*** (*Supra*). However, in the said appeal before Hon'ble Apex Court, proceedings under consideration were pertaining to election petition. Therein amongst 9 issues, one issue was pertaining to non disclosure of ownership of vehicle by the a contesting candidates.

Finding of invalidation of the candidate in election was taken up before the Hon'ble Apex Court, alleging indulgence in corrupt practices. Specific objections raised by the rival party was regarding non disclosure of details of the vehicles standing in the name of wife of a candidate. In such connection and background, the above proceedings were heard by Hon'ble Apex Court.

In para 27 of the Judgment, the Hon'ble Apex Court had held that, *"mere failure to get registered the name of new owner of an already registered vehicle does not mean that sale/gift transaction would be invalidated and such a vehicle, despite being physically handed over to the new owner, cannot, by any stretch of imagination, be treated as still being in the possession and control of the formal owner"*.

In such background of election petition, wherein there was non disclosure of ownership of vehicle by a contesting candidate, the issue was tested.

Here, facts are distinct. Complainant is equipped with the cheque purportedly issued towards price of a vehicle, which he alleges to be owned by him. Record placed before trial court did not establish the title and ownership of complainant to carryout

transaction with accused. Vehicle said to be sold was not standing in complainant's name on the date of agreement or on the date of accepting cheque. Therefore, at such point of time, there is no legally enforceable debt. Moreover, simple stand of accused is that in above transaction he had issued blank cheque for raising finance i.e. for the loan of purchase of vehicle. But, as vehicle was not in the name of complainant, transaction has not been completed. Answers given by previous owner CW3 in cross also does not support complainant's case. When very validity of transaction has comes under shadow of doubt, it cannot be said that, cheque was towards legally enforceable debt.

In view of above discussion, no fault can be found in the judgment and order passed by trial court, acquitting the accused respondent herein. No good ground is made out to grant leave. No case made out on merit, leave so sought cannot be granted. Accordingly I proceed to pass the following order :-

ORDER

The application stands rejected.

(ABHAY S. WAGHWASE, J.)