



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO. 211 OF 2019

Kashinath s/o. Dodha Patil,
Age : 59 years, Occu. : Service,
R/o. : Flat No.1, Building No.6,
Patil Park, Near Old Gangapur Naka,
V. N. Naik Marg, Nashik

... Applicant/Appellant
(Orig. Complainant)

Versus

1. Ramkrishana Motiram Patil,
Age : 35 years, Occu. : Trade,
Resident of :
1) 'Omkar' Bungalow,
19/12/1 (B), Deshmukh Nagar,
Bavdhan Khurd, Pune - 21.

In the alternative
2) C/o. M. K. Patil,
M. P. Vivekanand Nagar,
Kargaon Road,
Chalisgaon, Dist. Jalgaon

In the alternative
3) C/o. Shriram and Patil Associates,
7/3 Manohar Apartment, Karve Road,
Erandwane, Pune -4.

**... Non-Applicant/
Respondent**
(Orig. Accused)

...
Mr. Bhushan Dhawale a/w Mr. J. V. Patil, Advocates for Appellant.
Mr. Vinod P. Patil, Advocate for Respondent sole.
...

CORAM : ABHAY S. WAGHWASE, J.
RESERVED ON : 22nd FEBRUARY, 2024
PRONOUNCED ON : 26th FEBRUARY, 2024

ORDER :

1. Leave to file appeal is sought by original complainant on

account of acquittal of respondent from offence punishable under section 138 Negotiable Instruments Act, 1881 by virtue of proceedings bearing S.C.C. No. 379 of 2005.

2. Finding fault in the appreciation and conclusion drawn by learned Judicial Magistrate First Class, (Court No.1), Chalisgaon, Dist. Jalgaon, learned counsel for complainant would point out that due to friendly relations, complainant had extended hand loan. Cheque towards repayment was issued. Both cheque as well as signature over it has not been denied, but still learned trial court acquitted the accused on the ground that complainant had no sufficient source to extend the loan. Learned counsel submits that, there is improper appreciation of both evidence as well as law, and therefore, there being good case on merits. Hence, he prays for leave to file appeal.

3. Per contra, learned counsel for respondent accused submitted that, complainant is a Government servant. Considering his salary, it is not possible for him to extend the loan of Rs.10,45,560/-. It is pointed out that, case is tried to be made about withdrawal of some amount from bank and remaining to be raised from near and dear ones, but there is no evidence in that regard. That, even complainant being a public servant, was not authorized

to enter into any loan transaction outside the service. That such aspects are categorically dealt and decided by learned trial Judge and has rightly dismissed the compliant and hence he prays to refuse leave by dismissing the application.

4. Perused the complaint and impugned judgment.

5. Case in trial court set up by complainant is that, out of good relations with accused, on request and as an urgent need of money, he gave Rs.10,45,560/-, and towards its repayment, accused issued cheque, but it was dishonoured and therefore proceedings under section 138 of N.I. Act were instituted after notice.

6. It seems that, apart from his own evidence at Exh.21, another witness is examined and reliance is placed on documents like cheque, bank return memo and notice etc.

7. Even, accused seems to have adduced his own evidence, evidence of bank official and Income Tax Authorities.

8. Both sides have adduced sufficient evidence from each of their side. *Prima face* complainant's case is that, because of friendly relations, loan was extended and towards repayment cheque was

issued. Specific defence of accused is that, he is a Chairman of Belganga Sugar Factory, which was suffering financial loss. Factory raised funds and complainant was member of Government Servants Co-operative Bank Dhule. Further complainant obtained loan from the bank to help the sugar factory. Case is also tried to be set up by accused that complainant being government servant, is not permitted to enter into such transaction in view of Maharashtra Civil Services Rules.

9. On going through the judgment, it transpires that learned trial court has answered points no.2, 3 and 4 in affirmative. But, complaint seems to be dismissed on the count that complainant failed to establish that there was legally enforceable debt towards accused.

10. In the light of above observations, there is a debatable issue and arguable points seems to be involved, which cannot be dealt and decided at this stage. It can only be done at appellate stage. Consequently, when initial presume is available and in the light of above peculiar defence, leave as prayed is required to be granted. Hence, I proceed to pass the following order :-

ORDER

- (i) Application stands allowed.

- (ii) Leave is granted to file Appeal.
- (iii) Registry to register the Appeal.
- (iv) Appeal stands **admitted**.
- (v) Call record and proceedings.

(ABHAY S. WAGHWASE, J.)