



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO. 91 OF 2023

Dnyanoba S/o. Ramrao Yernale,
Age : 54 years, Occu. : Service,
R/o. L.I.C. Colony, Latur,
Tq. & Dist. Latur.

... Applicant
(Orig. Complainant)

Versus

1. Rameshwar S/o. Babu Bharati,
Age : 51 years, Occu. : Business,
Proprietor of Mauli Idli Center &
Ice-cream Parlor, R/o. Malang Complex,
Deshpande Colony, Old Ausa Road,
Latur, Tq. & Dist. Latur.

2. The State of Maharashtra.

... Respondents

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Mr. Tukaram M. Venjane, Advocate for Applicant.
Mr. Vijay A. Dhakne, Advocate for Respondent No.1.
Mr. S. S. Dande, APP for Respondent No.2 - State.
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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 08 AUGUST 2025

PRONOUNCED ON : 13 AUGUST 2025

ORDER :

1. Original complainant hereby seeks leave to file appeal against judgment and order of acquittal dated 06.06.2023 passed by learned J.M.F.C. Court Room No.2, Latur in S.C.C. No.2163 of 2018.

2. Learned counsel for applicant would submit that, due

to friendly relations and financial difficulties, present respondent no.1 borrowed Rs.8,00,000/- from applicant. In view of relations, Rs.7,00,000/- were paid for a period from January - February to June 2018. Respondent no.1 assured to repay the same. On persuasion, respondent no.1 issued cheque dated 04.09.2018 and 14.09.2018 respectively. But on its presentation, the same were dishonoured. It is further submitted that, as required under law, legal notice was dispatched, but still there was no repayment and that proceedings under section 138 of Negotiable Instruments Act were initiated.

3. Learned counsel for applicant pointed out that, in support of above case for offence under section 138 of N.I. Act, complainant adduced his own evidence at Exh.18 and also adduced evidence of witness Laxman. Apart from placing the cheque in question on record, the bank memo, legal notice and postal acknowledgment were also produced. In spite of availability of overwhelming evidence and necessary ingredients for attracting section 138 N.I. Act, full-proof case was made out. Learned counsel pointed out that, presumption under section 139 of N.I. Act arose. However, learned trial court acquitted the accused merely raising doubt about financial capacity of complainant applicant to extend hand loan. According to learned counsel, there is improper

appreciation of evidence as well as law. Applicant has a good case in appeal and hence he urges for leave.

4. Per contra, learned counsel for respondent no.1 would submit that, there was no borrowing of hand loan as alleged. That, there is no evidence either documentary or oral to that extent. That, in fact complainant had no capacity to extend loan. He further pointed out that, the complaint is vague and ambiguous, and no exact details as to when and where hand loan was given and in what form it was available, and therefore, learned trial court rightly dismissed the complaint.

5. After hearing submissions of both sides and on going through the papers, it is emerging that, S.C.C. No. 2163 of 2018 was instituted by present applicant on the premise that, due to financial difficulties, respondent borrowed Rs.8,00,000/- and due to friendly relations Rs.7,00,000/- was extended. However, as pointed out, in the affidavit of complainant, it is merely stated that, in between January and February 2018 Rs.2,00,000/- were paid and Rs.5,00,000/- were paid in June 2018. The exact dates of extension of hand loan, nor in what form loan was extended is clarified by the complainant. For drawing presumption under section 139 of N.I. Act, it is expected of complainant to

demonstrate and establish legally enforceable debt.

6. In view of above discussed material, complaint is non specific. Moreover, cross of complainant does go to show that he is a teacher by profession and has no other source and means to extend such huge loan. He admitted regarding receipt of salary of Rs.40,000/- per month and earning Rs.20,000/- per year from agriculture. Complainant admitted that he resides in a rented premises. As stated above, what was the source to extend Rs.7,00,000/- is not demonstrated. For above reasons, learned trial court rightly dismissed the complaint.

7. Oral prayers are also made that matter may be remanded back for retrial for further reliance on documentary evidence. Such prayer cannot be entertained. With available quality of evidence on behalf of complainant, no purpose would be served by granting leave. Hence, the following order is passed :

ORDER

- (i) The leave is refused.
- (ii) The application is rejected.

(ABHAY S. WAGHWASE, J.)