



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO. 11 OF 2024

Santoshimata Merchant Co-operative
Credit Society Ltd. Bhusawal
Through its Special Recovery Officer,
Prashant Laxman Bharambe,
Age : 48 years, Occu. : Service,
R/o. Bhusawal, District Jalgaon.

... Applicant
(Original Claimant)

Versus

1. Kazi Sayeed Ahmed Ali,
Age : 60 years, Occu. : Business,
R/o. Indian Oil Petrol Pump,
Nashirabad, Tq & Dist. Jalgaon.

(Original Accused)

2. The State of Maharashtra

... Respondents

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Mr. K. B. Jadhav, Advocate for Applicant.

Mr. Shaikh Nasimoddin, Advocate for Respondent No.1.

Mr. S. S. Dande, APP for Respondent No.2.

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 18 JUNE 2025

PRONOUNCED ON : 25 JUNE 2025

ORDER :

1. Original complainant society, who had instituted proceedings under section 138 of Negotiable Instruments Act, 1881, is dissatisfied by dismissal of said complaint bearing Summary Criminal Case No. 672 of 2004 and so seeking leave to assail the same.

2. Learned counsel for applicant would submit that, applicant is a registered co-operative society. Respondent no.1 is its borrower, who had applied for loan and it was duly granted and paid. That, towards repayment of loan, cheques were issued, but the same were dishonoured, and therefore, it is pointed out as required under law, legal notice was dispatched, but it was refused to be accepted and hence complaint was filed under section 138 of N.I. Act. It is further pointed out that, neither respondent no.1 denied borrowing any loan nor denied signature over the cheque. Complainant had proved loan transaction by placing necessary documents on record. However, the same has not been correctly appreciated. Legal debt was duly proved, but same has not been correctly appreciated. Learned trial court failed to appreciate the essential requirements to bring home the offence under section 138 of N.I. Act and erred in acquitting the accused without assigning legally sound and acceptable reasons. That, applicant has a good case in appeal and as applicant intends to question the sustainability and maintainability of the judgment and order passed by learned trial court, learned counsel urges for grant of leave.

3. On the other hand, learned counsel for respondent no.1 opposed on the ground that applicant had miserably failed to prove

the exact loan borrowing. That, no particulars and details which are necessary for proving the case are supplied. At the outset, there was no resolution authorizing complainant to institute the proceedings and complainant was also unaware of alleged loan transaction and it has so become evident from the answers given by complainant's witness no.1 while facing cross. Thus, according to learned counsel for respondent, there is no infirmity in the order of dismissal of complaint and consequential acquittal.

4. Heard. Perused the papers. It appears that the present applicant which is the co-operative society instituted proceedings under section 138 of N.I. Act alleging accused respondent herein to be a borrower of loan and issuing cheque towards repayment, but the same getting dishonoured.

5. However, on going through the papers and judgment sought to be impugned, it is clear that, except promissory note, there is no foundation to the alleged loan transaction. When the loan was obtained, of what amount and for what purpose, has not been demonstrated or substantiated. As pointed out witness on behalf of complainant while facing cross admitted that, he is not party to the loan transaction. He is unable to state exact quantum of loan obtained by accused respondent. Mere photocopy of loan

extract has been placed on record, but it was also without any stamp, seal or signature of authorized person. Documents which are sought to be believed are not proved as per the Evidence Act and it is evident from the observations of learned trial court, more particularly, paragraph nos. 28 to 31 onwards. Therefore, learned Trial Court has considered each and every aspects of essentials of section 138 of N.I. Act. Legal debt has not been primarily proved as expected by law. No purpose, therefore would be served by granting leave i.e. for want of merits in the case. Any exercise by way of appeal, would be futility with such quality of evidence on record. Hence, the following order :-

ORDER

- (i) Leave is refused.
- (ii) Application is rejected.

(ABHAY S. WAGHWASE, J.)