2026:BHC-AUG:644

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT.PARTY NO.100 OF 2024

Varsha Baburao Kale,
Age : 41 years, Occu. : Household,
R/o. Shivshankar Colony,
Chh. Sambhajinagar ... Applicant
(Orig. Complainant)

Versus

Kakasaheb Dhondiram Jadhav,
Age : 52 years, Occu. : Business,
R/o. P. No. 62, Gajanan Nagar,
Galli No.1, Garkheda Parisar,
Chh. Sambhajinagar. ... Respondent.
(Orig. Accused)

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Mr. Yogesh A. Jadhav, Advocate for Applicant.
Mr. A. M. Hajare, Advocate for Respondent.

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CORAM : ABHAY S. WAGHWASE, J.
RESERVED ON : 07 JANUARY 2026
PRONOUNCED ON : 09 JANUARY 2026

ORDER :

1. Original complainant, who instituted S.C.C. No.8655 of 2020, is aggrieved by the order of acquittal passed by learned Additional Chief Judicial Magistrate, Court No.3, Aurangabad dated 19.03.2024 acquitting the accused from offence punishable under section 138 of Negotiable Instruments Act and is thereby seeking leave to file appeal against the same.

2. Present applicant instituted above referred complaint

under section 138 N.I. Act alleging that, complainant and accused are relatives and have cordial relations. As accused was in need of financial help, on demand Rs.3,00,000/- hand loan was given. Towards repayment of the same, two cheques of Rs.1,50,000/- each were issued by accused, but on its presentation for realization, the same were dishonoured, and therefore, after legal notice, above complaint was lodged seeking action under 138 N.I. Act. Accused appeared and contested the complaint denying borrowing of any hand loan, but took a stand that cheques in question were given by him to the husband of complainant as a security while they both were part of a group which was running *Bhishi* and the same being misused. The respective cases of each side were appreciated by learned court below and reached to a finding that accused has succeeded in probabilizing his defence and has thereby rebutted the presumption in favour of complainant and ultimately acquitted the accused.

3. It seems that, in the trial court, complainant has adduced documentary evidence like cheques in question, bank memo and legal notice. Accused has also adduced documentary evidence at Exh.55 and 57 and to establish his defence examined himself below Exh.43.

4. On one hand complainant has come with a case of

extending loan to the tune of Rs.3,00,000/- due to financial difficulty of accused, who is a relative and cheques issued towards the same to be dishonoured. It was the specific defence taken by the accused that there was no borrowing of amount and rather cheques in possession of complainant's husband, who was running a *Bhishi,* of which even accused was a member, were misused.

5. Complainant and accused have both adduced evidence as stated above, admittedly, signature over the cheques, is not disputed and what is questioned is borrowing of loan. As accused has not refuted cheques in possession of complainant and signature over it, initial presumption available under section 138 of N.I. Act had automatically come into play and burden shifted on accused to rebut the same.

6. To prove his defence, accused has examined himself at Exh.43 and had stated that, he and husband of complainant, namely Babural Kale were members of *Bhishi* since 2018. In the said transaction, complainant's husband had obtained three signed blank security cheques and in spite of demand, the same not to be returned and rather refused to be returned, retained the same and further misused to show loan transaction. Though cross examined by complainant about version of accused, it does not seem to have been renders doubtful.

7. Another defence taken by accused is that, even son of complainant had lodged proceedings under section 138 of N.I. Act, alleging loan transaction and the said case is pending. Copy of the said S.C.C. are also placed on record. Even copies of complaints filed by husband of complainant against several persons under section 138 are also placed on record. Though complainant in her evidence expressed her willingness to examine her husband, surprisingly she has refrained from doing so.

8. Learned trial court has in paragraph 13 noted that complaints filed by the husband of complainant against other persons are verbating identical to the contents of complaint against present accused.

9. Therefore, the defence of accused about complainant misusing the cheques in the possession of her husband has been probabilized to some extent.

10. It further appears that complainant has failed to give details as to the source from where Rs.3,00,000/- were raised by her to extend hand loan. Agriculture income was pointed to be the source, but learned trial court has in paragraph 15 noted that the 7/12 extract were not of the year, of which hand loan transaction with accused was said to have taken place. Learned trial court, in

paragraph 16, has noted that complainant relied on statement of account to demonstrate her financial capacity, but on scrutiny of the said statement, it was noticed that there was no entry depicted in the bank statement reflecting withdrawal of Rs.3,00,000/-, which were allegedly given at relevant time. Therefore, on such count also, complainant's case was rendered doubtful.

11. Visited the impugned judgment. It appears that, learned trial court has considered and appreciated the evidence by both sides on the line of legal requirements. Both oral and documentary evidence is carefully appreciated while recording a finding that complainant failed to make out the case for commission of offence under section 138 of N.I. Act and rather defence succeeded in probabilizing his defence. Even on complete re-appreciation of the evidence, this court is also firm view that it was the case fo acquittal for above reasons. No case being made out on merits to accord leave, I proceed to pass the following order : -

ORDER

(i) Leave is refused.

(ii) Application is rejected.

(ABHAY S. WAGHWASE, J.)

Tandale