

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPEAL NO.456 OF 2002

Ramkishan s/o. Surajmal Rathi,
Age 65 years, occ.Business,
r/o. Latur ..Appellant

Versus

Pradnya w/o. Pradunyakumar Shah
Age : Major, occ. Household,
r/o. c/o. Dr. Babu Shah Market
Yard Road, Near Nawa Naka
Latur ..Respondent

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Mr.Ram Deshpande, advocate for appellant

Mr.S.S.Choudhary, advocate for respondent

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CORAM : M.T. JOSHI, J.

DATE : MARCH 23, 2015

ORAL JUDGMENT :

Heard both sides.

2] Aggrieved by recording acquittal in favour of the respondent for the offence punishable under Section 138 of the Negotiable Instruments Act, present appeal is preferred by the original complainant.

3] The case, in short, was as under :-

. The husband of the respondent and the complainant/appellant are friends. Out of intimacy, the respondent asked for a hand-loan of Rs.45,000/- for payment of certain bank loan. Accordingly, the amount was paid to the respondent and towards repayment of the same, cheque dated 22nd July, 1998 was issued by the respondent in favour of the complainant/appellant. The cheque was presented to the bank on the due date, however, it was dishonored for the reason of having insufficient funds in the account of the respondent. Therefore, within the period of limitation, notice by R.P.A.D. was issued to the respondent and thereafter, the complaint came to be filed.

4] Defence of the respondent was that she had no transaction with the complainant. She neither had obtained any hand-loan from the appellant nor she had issued any cheque to the appellant. In fact, she had handed over a blank cheque to one Kishor Dhekane, who was having good relations with the respondent. The said cheque was misused and therefore, she sought acquittal.

5] Before learned Judicial Magistrate F.C., the complainant examined himself as well as the Bank Manager. The necessary documents like cheque return memo and postal acknowledgment receipt were filed.

6] The acquittal came to be recorded for the reasons that the complainant/appellant himself was unable to disclose the date of the transaction between him and the respondent. The period of repayment of the hand-loan mentioned in the

complaint and the notice as well as in the oral evidence are different. In the circumstances, learned Judicial Magistrate F.C. came to the conclusion that the presumption regarding issuance of the cheque for repayment of the hand-loan has been rebutted.

7] Upon hearing both sides, in my view, learned Judicial Magistrate F.C. has taken a reasonable and probable view and the present appeal, therefore, deserves to be dismissed for the reasons to follow.

R E A S O N S

8] It should be noted that according to the complainant, a specific amount of Rs.45,000/- was given to the respondent for repayment of certain bank loan and she had agreed that the amount would be repaid within 15 to 20 days and for that

purpose, the cheque dated 22nd July, 1998 was also issued in his favour. His evidence as well as the notice, however, are contradictory to all these pleadings. In the circumstances, learned Judicial Magistrate F.C. has observed that the transaction was denied by the respondent and as there were contradictions in the oral evidence of the complainant that too, without having any other proof, except the oral testimony of the complainant regarding the loan transaction, the same cannot be believed.

9] I do not find any reason to deviate from the said reasonings of learned Judicial Magistrate F.C.

10] Hence, the following order :-

i] The appeal is hereby dismissed without any order as to costs.

ii] Mr.Ram Deshpande, learned counsel for the appellant, appointed by the Court, be paid fees of Rs.10,000/- (Rs.Ten Thousand).

[M.T. JOSHI, J.]

kbp