IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.865 OF 2011

Smt.Nirmal Dewan widow of
Shri. Trilok Dewan, residing at
Sikka Nagar V.P. Road,
Mumbai 400 004. … Appellant

Versus

1. Shri.Anand Shroff, age 31 years,
Occupation : Business, residing
at South Thrast Chowl, 1st Floor,
R.S.Nimkar Marg,
Mumbai – 400 004.

2. The State of Maharashtra .. Respondents

with
CRIMINAL APPEAL NO.866 OF 2011

Smt.Nirmal Dewan widow of
Shri. Trilok Dewan, residing at
Sikka Nagar V.P. Road,
Mumbai 400 004. … Appellant

Versus

1. Shri.Anand Shroff, age 31 years,
Occupation : Business, residing
at South Thrast Chowl, 1st Floor,
R.S.Nimkar Marg,
Mumbai – 400 004.

2. The State of Maharashtra .. Respondents
3.

with
CRIMINAL APPEAL NO.868 OF 2011

Smt.Nirmal Dewan widow of
Shri. Trilok Dewan, residing at
Sikka Nagar V.P. Road,
Mumbai 400 004. … Appellant

Versus

1. Shri.Anand Shroff, age 31 years,
Occupation : Business, residing
at South Thrast Chowl, 1st Floor,
R.S.Nimkar Marg,
Mumbai – 400 004.

2. The State of Maharashtra .. Respondents

Mr.Sandip Velkar with Ms.Reshma Kurle, Advocate for the Appellant.
Mr.H.H.Nagi with Ms.Chaula Solanki, Advocate for the Respondent No.1.
Mr.Deepak Thakre, APP for the Respondent/State.

CORAM : ABHAY M. THIPSAY, J.

DATED : 20th MARCH, 2015

COMMON JUDGMENT :

1 These three Appeals can be conveniently disposed of by this common order as the parties are the same, and the questions needing determination are also the same.

2 The appellant's husband Shri Trilok Diwan had filed three complaints against the respondent no.1 herein, alleging commission of three separate offences punishable under section 138 of the Negotiable Instruments Act, by him. According to the said Trilok Diwan, the respondent no.1 had issued 6(six) cheques to him as and by way of repayment of the hand-loan taken by him from the said Trilok Diwan, which cheques were dishonored for want of sufficient funds in the drawer's account. Three separate

complaints – one in respect of two cheques – came to be filed as the amount of these cheques was not paid in spite of making a demand for the same. Trilok Diwan died during the pendency of the said complaint cases. The present applicant, who is his widow, thereafter, sought permission to get herself substituted as the complainant in place of Shri Trilok Diwan, which was granted.

3. All these cases were tried by the Metropolitan Magistrate 14th Court, Girgaum. By the consent of the parties, common evidence was recorded in all the three cases. The learned Magistrate found the respondent no.1 guilty in all the cases, and sentenced him to pay a fine of double the amount of the cheques in each case. The respondent no.1 appealed to the Court of Sessions by filing three separate Appeals challenging his conviction and the sentences imposed upon him by the Magistrate. The Court of Sessions allowed these Appeals and acquitted the respondent no.1 (the appellant before the Sessions Court). The appellant – the substituted complainant and widow of the original complainant – is aggrieved by the said order of acquittal and has, after obtaining Special Leave of this Court as contemplated under section 378(4) of the Code, filed these three Appeals.

4 I have heard Mr.S.A.Velkar, the learned counsel for the appellant. I have heard Mr.H.H. Nagi, the learned counsel for the respondents. With their assistance, I have gone through the Appeal Memos and the annexures thereto, which are identical in all the appeals, including the judgments of conviction delivered by the learned Magistrate and the appellate Judgments of acquittal as delivered by the Addl. Sessions Judge.

5 It is not necessary to discuss the facts of all the three cases separately. It is because they were tried together on the basis of common evidence. Even the written arguments that were filed before the learned Magistrate were common. The facts of all the three cases were considered together by the learned Magistrate as also by Appellate Court though the complaint cases and the Appeals were separate and were numbered separately.

6 For the sake of convenience and clarity, the appellant shall hereinafter be referred to as 'the complainant', and the respondent no.1 as 'the accused'. Whenever any reference to the said Trilok Diwan would be required, he would be referred to as 'the deceased complainant'.

7 The case of the deceased complainant, as made out in the complaints was that he knew the accused personally, and that he had given friendly loan to the accused. That, in re-payment of the said loan which was taken on different dates, the accused had issued six different cheques of Rs.1,00,000/- each to the deceased complainant. That, as all the six cheques were dishonored for want of sufficient funds in the drawer's account, three separate complaints, two for each cheque as aforesaid, came to be filed.

8 In order to establish her case, the complainant examined herself as a witness and tendered a number of documents in evidence. The accused also adduced evidence in defence by examining himself and one Akhtar Hussain Shaikh as defence witnesses. However, it is not necessary to make a detailed

reference to the evidence adduced during the trial. It is because the Appeals can be satisfactorily decided on the basis of the facts which are undisputed.

9 The defence of the accused, as taken by him before the Magistrate was that the deceased complainant was doing an unauthorized business of money lending though he did not have any license under the Money Lenders Act. That, the deceased complainant used to take blank signed cheques from the parties to whom he would be advancing the loan. That, blank cheques which had been taken by the deceased complainant from the father of the accused had been misused by him by putting a date and figure on those cheques, though the entire loan taken from the deceased complainant had already been re-paid by the accused.

10 The details of the friendly loan – as reflected in different complaints are as follows :-

C.C.No	**Date of Receiving loan**	**Total loan**	**Details of the Cheque issued for repayment**
2193/SS /2005	01/04/2004	Rs.2,00,000/-	1) Cheque No.951796 Rs.1,00,000/- Date: 02/04/2005 Presentation Date:4/4/2005 Dishonour Date : 06/04/05 2)Cheque No.951797 Rs. 1,00,000/- Date:04/04/2005 Presentation Date:4/4/2005 Dishonour Date :06/04/05

2194/SS /2005	01/01/2004	Rs.2,00,000/-	1)Cheque No.955404 Rs.1,00,000/- Date:02/04/2005 Presentation Date:4/4/2005 Dishonour Date :05/04/2005 2)Cheque No.955405 Rs.1,00,000/- Date:02/04/2005 Presentation Date:4/4/2005 Dishonour Date :05/04/2005
2195/SS /2005	16/04/2004 14/08/2004	Rs.2,00,000/-	1)Cheque No.951785 Rs.1,00,000/- Date:04/04/2005 Presentation Date:5/4/2005 Dishonour Date :06/04/2005 2)Cheque No.958980 Rs.1,00,000/- Date:04/04/2005 Presentation Date:5/4/2005 Dishonour Date :06/04/2005

11 As per these complaints, though the dates of giving of the hand-loans are different, the entire amount of Rs.6,00,000/- -which is said to be the subject matter of the three complaints - had been given by the deceased complainant to the accused only during the period from 1st April 2004 to 14th August 2004. Thus, it should be clearly understood that the loan which was disbursed by the deceased complainant to the accused, was during the period from 1st January 2004 to 14th August 2004. All the complaints proceeded on the basis that it was in repayment of this loan that the cheques had been issued.

12 The main contention of the accused was that he had repaid the amount of loan together with interest. According to the

accused, these payments were made by him by cheques as per the details given below :-

Date	Cheque no.	Amount	Payee
16/04/04	951798	Rs.1,00,000/-	Mr.Trilok Diwan
19/05/04	951799	Rs.78,500/-	Mr.Trilok Diwan
25/06/04	955408	Rs.1,01,500/-	Mr.Trilok Diwan
03/08/04	951795	Rs.1,06,000/-	Mr.Trilok Diwan
26/08/04	962821	Rs.1,57,000/-	Mr.Trilok Diwan
26/10/04	962823	Rs.1,00,000/-	Mr.Trilok Diwan

13. Thus, according to the accused, during the period from 16th April 2004 to 26th October 2004, a total amount of Rs.6,43,000/- has been paid by him to the deceased complainant Trilok Diwan. This has been duly proved by the bank statement that was tendered before the trial court during evidence, and was duly exhibited as 'D-12 collectively'(in C.C.No.2193/SS/05). There is no challenge to this aspect of the matter.

14. Thus, in repayment of the loans which, according to the complainant, given to the accused during the period from 1st January 2004 to 14th August 2004, totalling Rs.6 lakhs, an amount of Rs.6,43,000/- had already been paid by the accused to the deceased complainant during the period from 16th April 2004 to 26th October 2004. Out of the six cheques which are the subject matter of the three complaints, two are dated 2nd April 2005 and the remaining four are dated 4th April 2005. All the cheques were presented for payment on 5th April 2005, and were dishonored. Now, the contention of the accused is simple. That, the loan of Rs.6,00,000/- was received during the period from 1st April 2004

to 14th August 2004 as per the complainant's own version; and admittedly, an amount of Rs.6,43,000/- has been paid by the accused to the deceased complainant during the period from 16th April 2004 to 26th October 2004. *The question that the accused poses is this : how would, in that case, there be any liability on him on 2nd April 2005 or 4th April 2005, which are the dates of the cheques in question ?*

15 It is vehemently contended by the learned counsel for the complainant that the payments in question had been made in discharge of *some other liability*. According to him, there were other transactions between the accused and the deceased complainant, and that, '*there is nothing to show that the payments that had been made by the accused to the deceased complainant were against the loans taken by him which have been mentioned in the present complaints.*' It is submitted that as the deceased complainant died, his wife – the complainant is not aware of the details of the other transactions between the parties, and therefore, is not in a position to state as to for what, the payments had been made by the accused to the deceased, as detailed above, but from the suggestions given to the complainant in her cross-examination itself, it was apparent that there were other transactions between the accused and the original complainant.

16 I have carefully considered this aspect of the matter.

17 The complaints do not disclose that any payments were made by the accused to the complainant in connection with some other transactions between them during the period between

the taking of loan/s and issuance of cheques for the repayment thereof. When the loan said to have been given by the deceased complainant to the accused, was during the period from 1st January 2004 to 14th August 2004, and when during the period from 16th April 2004 to 26th October 2004, an amount of Rs.6,49,000/- was admittedly paid by the accused to the complainant, it was for the complainant to have explained what for the amount had been received, if it had not been towards the repayment of the loans advanced. This has not been done.

18 In this background now, the other aspects of the matter need to be examined. The accused has taken a categorical defence that the dates and writings on the cheque are not put by him. He has categorically stated that his father had given six blank undated cheques which were signed by the accused, to the complainant, and that the said cheques were presented by the complainant to the bank after putting a date and amount, without the knowledge of the accused. In the cross-examination, the accused categorically stated that the hand-writing on those cheques was <u>not</u> of the accused. This evidence of the accused has not been successfully challenged.

19 The complainant had filed written arguments in the trial court. These arguments were primarily directed towards pointing out that different defences were taken by the accused which were not consistent with one another. Much emphasis has been given to the fact that the accused claimed the transaction to be between his father and the deceased complainant. However, I am unable to hold that any contradictory or conflicting defences

were taken by the accused. His defence, in reality, was that blank cheques were issued by him on which the dates and figures were put probably by the deceased complainant, and that, on the dates of the cheques and when they were presented for payment, no amount was actually due and payable by the accused to the complainant. Once the accused was able to show that during the period between the date of receipt of the loan amount and the date of issuance/presentation of the cheques for payment, he had paid to the complainant more than the loan amount, it was for the complainant to have shown for what purpose the amounts were received by the deceased complainant, if they were not for repayment of the loan in question. It cannot be simply assumed that the payments made were for some other transactions. The Magistrate simply assumed it though the complaint was not able to state as to what the other *transactions* were.

20 The learned Magistrate had failed to appreciate the facts of the case properly. He was of the view that '*even if the accused had proved that he had paid more than the loan amount after the loan had been advanced to him, and before the presentation of the cheques in question, still it was for the accused to have shown that the payments had been made, were towards the repayment of loan only, and not for any other purpose.*' This is patently incorrect and absurd. Putting this burden on the accused was contrary to law and logic. However, even that burden had been discharged by the accused, by stating it to be so in his evidence, which evidence was replied only by asserting that the complainant, being a widow of the deceased complainant, was unaware as to for what the amounts were paid by the accused to the deceased complainant.

The judgments of conviction as recorded by the learned Magistrate were, therefore, patently incorrect.

21 The learned Addl. Sessions Judge, on Appeal, has appreciated the evidence properly, and has come to a correct conclusion that the accused was entitled to have benefit of doubt, and to be acquitted.

22 The order of conviction and the sentences imposed upon the accused, have been rightly set aside by the Addl. Sessions Judge, in Appeal.

23 This is not a case where the orders of acquittal, as passed by the learned Addl. Sessions Judge, warrant any interference.

24 Appeals are dismissed.

(ABHAY M.THIPSAY, J)