

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

CRIMINAL APPLICATION NO. 3648 OF 2014

GOKULDAS A. GUJRATHI GRAMIN BIGAR SHETI SAHAKARI
PATSANSTHA LTD., NIZAMPUR

VERSUS

BALKRISHNA DAMODAR AMRUTKAR AND ANOTHER

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Advocate for Applicant : Mr. Mukul S. Kulkarni.

Advocate for Respondent No.1 : Mr. P. M. Nagarjoge.

APP for Respondent No.2: Mr. S. N. Morampalle.

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CORAM : **INDIRA K. JAIN, J.**

DATE : 12th April, 2016.

P.C.:

. By this application under Section 378 (4) of the Code of Criminal Procedure Applicant / original Complainant seeks leave to appeal against the judgment and order dated 28th March, 2014 passed by the learned Judicial Magistrate First Class, Sakri, District Dhule acquitting the sole Respondent of the offence punishable under Section 138 of the Negotiable Instruments Act.

2 Heard the learned counsel for parties. Perused judgment and order as well as record.

3 It is the case of Complainant that a loan of Rs.12,00,000/- was sanctioned and disbursed to Accused. Complainant is Patsanstha. Accused became its member before two months of disbursement of loan. On 18th May, 2009 Accused issued cheque of Rs.12,00,000/- towards repayment of loan amount. Cheque was presented in the bank and it was dishonoured. Legal notice was issued. Despite notice amount of cheque was not paid so Complainant filed complaint under Section 138 of the Negotiable Instruments Act.

4 Substance of accusations was explained to the Accused. He pleaded not guilty and claimed to be tried. Accused raised a defence that cheque was issued towards security to the loan advanced to third party.

5 Complainant examined himself and one more witness and placed reliance on several documents. Accused did not enter the witness box nor examined any witness. Considering the evidence of Complainant and facts elicited in cross-examination Trial Court came to the conclusion that PW-1 Gajanan Shah was not authorized to file complaint on behalf of Patsanstha and Complainant has failed to establish that cheque was issued in the discharge of legally

enforceable debt. Rest of the points were answered in favour of Complainant. Accused came to be acquitted on the point of *locus* and for want of evidence on legally enforceable debt. Being aggrieved Complainant has preferred this application for leave to appeal.

6 It is submitted by the learned counsel for Respondent that Accused cannot be held responsible for the liability of third person. Learned counsel submits that Complainant has admitted that amount was transferred to the account of third persons and so Trial Court has rightly acquitted the Accused. Reliance is placed on the decision of this Court in **Nandkishore Mehra Vs. Sudhir Transport Ltd. & Anr**¹ in which reference is made to the decision of the Honourable Supreme Court in **Khedu Mohton and Ors. Vs. State of Bihar**² and **C. Anthony Vs. K. G. Raghavan Nair**³.

7 This Court has gone through the authority relied upon by learned counsel for Respondent. Facts in the said case were entirely different. It was a case of self drawn cheque. No document to show loan transaction was produced before the Court. In the present case Complainant has placed on record number of documents showing the

1 2008 ALL MR (Cri) 2751

2 AIR 1971 S.C. 66

3 2003 ALL MR (Cri) 130 (S.C.)

loan transaction and cheque is not self drawn.

8 With the assistance of the learned counsel for parties this Court has gone through Exhibit 54 resolution dated 1st March, 2009 authorizing CW-1 Gajanan Shah to file complaint and prosecute the Accused for failure to pay loan amount. It appears from Exhibit 54 that authorization to Gajanan Shah is not limited to a particular cheque but it is till realization of loan amount. The issue of *locus* therefore needs reconsideration.

9 So far as legal liability is concerned there is no whisper in the entire judgment of Trial Court regarding voluminous documents proved by Complainant pertaining to loan transaction. Loan application (Exhibit 63), receipt (Exhibit 64), promissory note (Exhibit 65), deed of guarantee (Exhibit 67), agreement (Exhibit 68) and statements of accounts (Exhibit 69) came to be proved by Complainant to show that amount was disbursed towards loan to Accused. The evidence of Complainant is required to be evaluated in the light of above documents.

10 In the above premise this Court finds that Complainant has an arguable case. Application deserves to be allowed. Hence the

following order –

ORDER

- I. Criminal Application No.3648 of 2014 is allowed.
- II. Leave granted.
- III. Appeal is **Admitted**.
- IV. Mr. P. M. Nagarjoge, learned counsel for Respondent No.1 and Mr. S. N. Morampalle, learned APP for Respondent No.2 / State waive service of notice.
- V. Action under Section 390 of the Code of Criminal Procedure stands dispensed with.

[**INDIRA K. JAIN, J.]**

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