IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.871 OF 2005

Bhaichand Hirachand Raisoni,
Gramin Bigar Sheti Sahakari
Pat Sanstha Ltd., Talegaon,
Tq. Jamner, District Jalgaon
through Gajanan Pandurang Tayade
Age 25 years, Occ. Service,
R/o Nagar Khana, Jamner,
District Jalgaon ... APPELLANT
(Original Complainant)

VERSUS

Shabbirsha Shakursha
Age 36 years, Occu. Business/ Agril.
R/o Islampura, Shendurni,
Tq. Jamner, District Jalgaon ... RESPONDENT
(Original Accused)

.....
Shri B.R. Warma, Advocate for appellant
Shri S.P. Tiwari, Advocate for respondent
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CORAM: A.I.S. CHEEMA, J.

DATED: 22nd April, 2016.

Date of reserving judgment : 12th April 2016
Date of pronouncing judgment : 22nd April 2016.

**J U D G M E N T** :

1. This appeal is by Pat Sanstha - original complainant against the acquittal of respondent - accused.

2. The appellant - complainant filed a private complaint under Section 138 of the Negotiable Instruments Act against respondent - accused (hereinafter referred to as 'accused') contending that, the complainant Society had granted a loan of Rs.43,456/- to the accused to purchase motorcycle. To discharge the liability, accused had issued cheque of Rs.30,000/- bearing No.796574 of Jalgaon District Central Cooperative Bank, Shendurni on 19.6.2003. The cheque was presented to the Bank and was returned on 21.6.2003 for insufficiency of funds. A notice dated 27.6.2003 came to be issued, but returned back as the accused did not claim the same.

3. In the trial Court, on behalf of the complainant, evidence of one of its employees Gajanan Pandurang Tayade was brought on record. He proved the dishonoured cheque and the memorandum from the Bank Exh. 33 and Exh.34 regarding dishonour. He also proved the notice Exh.35 and the sealed envelope Exh.36-A with notice inside Exh.36-B. The trial Court, after considering the evidence, acquitted the accused and thus, this present appeal against acquittal.

4. I have heard counsel for both sides. The learned counsel for the appellant - complainant submitted that, the complainant society was in the Banking business and the accused had applied for loan to buy a motorcycle. As per the practice, the amount was directly disbursed to the dealer. The counsel submitted that, this is Banking procedure which was followed, and the trial Court wrongly acquitted the accused because the cheque of loan was issued by the society to Pagaria Auto Centre instead of giving the money in the hand of the accused. It was submitted that, the accused has not led any evidence in defence and the cheque issued by the accused in favour of the complainant was admittedly dishonoured and so the accused is liable to be convicted.

5. Against this, the learned counsel for the respondent - accused supported the judgment of the trial Court. It was submitted that, there was no material to even show that loan was handed over to the Pagaria Auto Centre. It was submitted that, no relevant documents have been brought on record and the trial Court rightly acquitted the accused.

6. I have gone through the complaint which was

brought before the trial Court as well as the evidence. The complainant is cooperative society claiming that it was giving loan to people in its jurisdiction for agricultural as well as other reasons also. The respondent - accused wanted to buy a motorcycle of Bajaj Company and made request for loan to the complainant. Loan of Rs.43,456/- was approved and accused executed necessary documents. The complaint mentions that, in the loan account on 19.6.2003 Rs.30,000/- was outstanding, for which the accused issued the cheque No.796574. It is mentioned that, the cheque got dishonoured on 21.6.2003.

7. In support of complaint as above, the evidence of P.W.1 Gajanan was brought on record. The documents which were proved are only :-

(i) Cheque - Exh. 32.

(ii) Memorandums from the Bank - Exh. 33 and 34.

(iii) Authority letter in favour of P.W.1 - Exh.31.

(iv) Registered notice dated 27.6.2003 - Exh.35, its envelope Exh.36-A and notice, which was in envelope - Exh. 36-B.

8. The complainant did not bring on record documents of the application of accused seeking loan. It did not bring on

record extract of the loan account. The cross-examination of P.W.1 shows that, witness admitted that the accused was residing outside the territory of Talegaon. Evidence of P.W.1 shows :

> "It is true to say that, owner of Anuj Auto is member of our society. It is true to say that, he sold two-wheeler motorcycle through complainant society."

9. In the further cross-examination, this P.W.1 stated that, accused had made written requests for loan for purchasing motorcycle. As mentioned, the document is not on record. P.W.1 admitted that the Society passed resolution for granting loan to accused. Even this document is not on record. The witness further admitted that, "We paid loan to accused by D.D. in name of Pagaria Auto Centre." No documents of purchasing of D.D. i.e. Demand Draft is available nor any record to show that the complainant deposited money with Pagaria Auto Centre on behalf of accused so that Pagaria Auto Centre could transfer motorcycle to the accused are brought on record. What is the connection between Anuj Auto and Pagaria Auto Centre is also not clear on record. The accused took a defence in the cross-

examination of P.W.1 that he had not obtained any loan from the Society. In fact, the complaint as was filed and the examination-in-chief as was brought of P.W.1, was plain and simple that, accused wanted to buy motorcycle and so amount was approved and loan was given to the accused. Complaint or P.W.1 in examination-in-chief never claimed that there was any Auto Centre involved for disbursement of the loan. I agree with the submission of the learned counsel for the complainant that in commercial transactions and Banking system there are procedures where, when loan is approved for purchase of vehicle, the Banker, instead of handing over cash to the borrower, directly deposits the amount on behalf of the borrower with the Auto Centre or Auto Company and the vehicle is released by the Auto Company in favour of the borrower. In such transaction, Banker can claim that loan is liable to be repaid by borrower and it would be legally enforceable debt. However, all this is required to be proved. If the present complaint and evidence is seen, it was only in cross-examination that it transpired that there were Auto Centres involved. P.W.1 admitted, as mentioned, Demand Draft was given to Pagaria Auto Centre. But then, where are the documents ?

10. In the trial Court record, when the matter was at the stage of arguments, accused filed Exh. 40, trying to tender affidavit, claiming that he had tried to transact with Anuj Auto, for which he had issued three cheques including the present deposited cheque, but had not received the motorcycle. The trial Court rejected the application and the affidavit in that regard did not come on record nor was tested. Subsequently, the accused filed written notes of arguments raising similar points. The substance remains that if the complainant had issued cheque to Pagaria Auto Centre, it was possible for the complainant to bring on record documents showing sale of motorcycle to the accused. Absolutely no copies of documents of Registration Book, Tax Book or Insurance of the vehicle are available though they could have been brought on record if the transaction was as is claimed by the complainant.

11. I have gone through the observations of the trial Court. The trial Court has observed that the testimony of P.W.1 shows that loan was not given to the accused directly. It is observed that, it was given to Pagaria Auto Centre and there is nothing as to how such giving of loan to Pagaria Auto Centre was for and on behalf of accused. The learned counsel for

complainant attacked these observations, arguing that the trial Court did not understand the Banking procedure. I find that, although the trial Court has not said it in so many words, but the trial Court observed that, there was no evidence on record to show that accused received any amount from the complainant Society. When the complainant itself did not bring on record necessary documents and only the cross-examination showed that the genesis of the transaction had been suppressed, fault cannot be found with the finding of the trial Court that the complainant failed to establish the guilt of the accused.

12. For reasons discussed above, I do not find any reason to interfere with the findings recorded by the trial Court, holding the accused as not guilty and acquitting the accused.

13. For such reasons, the appeal is dismissed.

(A.I.S. CHEEMA, J.)