

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

CRIMINAL APPEAL NO. 635 OF 2016

The Maharashtra State Co-operative Marketing
Federation Ltd., Mumbai. .. Appellant

Versus

Hol Telbiya Utpadak Sahakari Sanstha Maryadit,
Dhule & Ors. .. Respondents

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Mr Sambhaji S. Tope, Advocate for the appellant
Respondent No. 1 has been served by paper publication
Mr C. T. Jadhav, Advocate h/f Mr A. D. Pawar, Advocate for 2, 5 to 7
Mr P. B. Pawar, Advocate for respondent No. 3 and 4.
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CORAM : V.L. ACHLIYA, J.
DATED : 21.10.2016.

PER COURT :

1. By consent, the appeal is finally heard at the stage of admission.
2. By the present appeal, the appellant has challenged the impugned Judgment & Order dt. 21.5.2014 delivered by the JMFC, Dhule in STC No. 5486/2002. By the impugned judgment, the trial Court has dismissed the complaint filed u/s 138 of the Negotiable Instruments Act, by observing that the appellant has failed to prove that the cheques in question were issued in discharge of legal liability or debt.

3. For the sake of convenience, the parties are described as they are referred in the impugned judgment. The complainant claims to be registered under the provisions of the Co-operative Societies Act and deals in the business of sale and marketing of chemical fertilizers. Respondent/Accused No. 1 also claim to be registered under the provisions of the Cooperative Societies Act, of which accused Nos. 2 to 7 alleged to be office bearers and members of the management at the relevant time of commission of offence. Since the year 1996 onwards, the complainant supplied fertilizers to accused No. 1 - Society on credit. The complainant had opened an account in the name of accused No. 1. Since the year 1996 onwards, various purchases were made and as against the outstanding liability various repayments were made. By the end of 2002, sum of Rs. 4,61,779/- was due against accused No. 1. It is the case of the complainant that, as against the liability of respondent No. 1, the cheques in question were issued which were dishonoured. The complainant had issued notice to accused No. 1 as well as its office bearers i.e. respondents No. 1 to 4. Since the notice was not complied within the stipulated time, the complaint was filed. The complainant has examined two witnesses to establish that the cheques in question were issued in discharge of the legal liability i.e. the amount due against the accused No. 1. On conclusion

of the trial, learned Magistrate has dismissed the complaint by observing that the complainant has failed to prove that the cheques in question were issued in discharge of legal liability or debt.

4. Learned counsel for appellant strenuously contended that the trial Court has failed to take into account that the accused have failed to adduce evidence in rebuttal. No evidence was adduced by the accused that the cheques in question were not issued as alleged by the complainant and same were misused.

5. On the other hand, learned counsels for the respondents submits that, it is not the requirement of law that irrespective of fact of the case the accused must step into witness box to adduce the evidence in rebuttal. They have submitted that the accused have misused the blank cheques which were obtained long back. It is further case of the accused that the working of the accused No.1–Society has come to standstill way-back in the year 1996 and there was no transaction post 1996 & the respondents No. 2 to 4 were not the members of managing committee of respondent No. 1. The complainant has adduced no evidence to enforce liability against the accused Nos. 1 to 4.

6. In order to appreciate the submissions, I have perused the Record & Proceedings. It appears that the trial Court has not considered the evidence in its proper perspective. It appears that the trial Court has placed much reliance upon the certified copy of the decision in Criminal Case No. 54 of 2008 wherein the accused No. 4 - Fakira acquitted u/s 420 & 201 of the Indian Penal Code. The complainant has produced on record the extract of ledger book as well as audited statement of accounts of last three financial years preceding the issuance of the cheques, which reflects various transactions of sale, purchase and various part payment made in account towards outstanding dues. In this view, the complainant has adduced evidence to show the liability of accused No. 1 in its books of account. In this view the case is made out that the evidence as adduced by complainant is not appreciated in its proper perspective. So also the trial Court has not specifically dealt with the issue as to whether on the date of dishonour of cheques and cause of action for filing of the complaint the accused Nos. 2 to 4 were office bearers of accused No. 1 and responsible for business & conduct of affairs of accused No. 1.

7. Both the counsel representing the parties have fairly conceded that, no proper evidence has been adduced in the matter from both the sides

and prayed for setting aside the impugned judgment & order and to remand the case back to facilitate both the sides to lead proper evidence.

8. In this view, I am inclined to set aside the impugned judgment and order and remand back the matter for fresh consideration. It is clarified that, the observations as made above are made for the limited purpose to consider as to whether the evidence is appreciated in its proper perspective & any case made out to interfere with impugned judgment & order. The observations so made shall have no bearing upon the decision of the case to decide afresh by giving further opportunity to lead evidence by complainant as well as accused. Hence, the following order.

ORDER

- (i) The impugned Judgment & Order dt. 21.5.2014 passed by the J.M.F.C., Dhule in STC Case No. 5486/2002 is set aside.
- (ii) The case is remanded back to the trial Court with direction to decide the case afresh by giving opportunity to lead further evidence by the complainant and evidence by accused.
- (iii) The complainant & accused be given opportunity to adduce oral as well as documentary evidence.

- (iv) The trial Court is directed to decide the matter afresh, without being influenced by the decision rendered earlier as well as the decision rendered by this Court, within six months from the date of receipt of the record and proceedings.
- (v) Parties are directed to co-operate with the trial Court in expeditious disposal of the case.
- (vi) Parties are directed to appear before the trial Court on 22.11.2016.
- (vii) Record & Proceedings be sent back to the trial Court.

[V. L. ACHLIYA]
JUDGE