IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 103 OF 2007

Vinod S/o Aatmaram Talreja, Aged 35 Years, Occupation Business, Resident of Kala Bawar, Gurukrushnanagar, Parbhani, District Parbhani **APPELLANT**

V E R S U S

Abdul S/o Rashid Shaikh, aged 35 Years, Occupation Business, Resident of Kala Bawar, Gurukrishnanagar, Parbhani, District Parbhani **Respondent**

Mr. R.B. Shingare, Advocate, holding for Mr. V.P. Latange, Advocate for the Appellant

Mr. R.T. Nagargoje, Advocate for the Respondent

CORAM : V.L. ACHLIYA, J.

DATE : 20TH JULY, 2017

ORAL JUDGMENT :

1. This Appeal is preferred against the order dated 25th July, 2006, passed in Summary Criminal Case No.3415 of 2001 by the Chief Judicial Magistrate,

Parbhani. By the impugned Judgment and order, the trial Court has acquitted the accused under Section 138 of the Negotiable Instruments Act. Being aggrieved, the appellant has preferred this appeal.

2. Before adverting to appreciate the submissions advanced, it is necessary to consider few facts leading to filing of Appeal. For the sake of convenience, the 'appellant' and 'respondent' are referred as 'complainant' and 'accused' as they are described in the impugned Judgment. The complainant filed criminal complaint against the accused under Section 138 of the Negotiable Instruments Act alleging therein that on 9th April, 2001, accused approached him and requested to provide him hand-loan of Rs.50,000/-. Since the complainant and accused were well acquainted with eachother, he advanced the hand-loan of Rs.50,000/- to accused. The accused agreed to repay the said amount within a period of one month. Towards the repayment, the accused had issued a Cheque of Rs.50,000/- bearing No.410970, dated 9th May, 2001 drawn and payable from his account with Sangli Urban

Co-operative Bank Limited, Branch Parbhani, payable in the name of complainant. The complainant deposited the said Cheque in his account with People's Co-operative Bank Ltd., Hingoli. On 10th May, 2001 itself the said cheque returned dishonoured with remark "funds insufficient". On 23rd May, 2001, the complainant got issued notice to accused through his Advocate. The notice was duly served upon accused on 26th May, 2001. However, the accused failed to comply with the notice. Therefore, the complainant filed complaint under Section 138 of the Negotiable Instruments Act and prosecuted the accused for the said offence.

3. On due consideration of the averments made in complaint and the documents relied in support of the complaint, the learned Chief Judicial Magistrate pleased to issue process under Section 138 of the Negotiable Instruments Act, vide order dated 9th July, 2001, passed in the matter. On appearance of the accused, the particulars of offence were explained to the accused on 18th January, 2005. Accused pleaded not guilty to the offence and claimed to be tried. In this

view, the case proceeded against the accused.

4. In order to prove his case, the complainant examined himself and further examined one Ravindra s/o Gopinath Gulwani, Branch Manager of Sangli Urban Co-operative Bank, Branch Parbhani.

5. The accused had taken a defence that the Cheque in question was issued by him to complainant as surety towards an amount of Rs.10,000/- advanced to one Moin Ansari. The complainant obtained the blank Cheque with his signature as a security towards the loan of Rs.10,000/- given to Moin Ansari. In spite of repayment of loan by Moin Ansari, the complainant has not returned the said Cheque and misused the same to file false case against him.

6. On due consideration of the evidence, the trial Court has acquitted the accused by observing that the complainant has failed to prove that the cheque in question was issued in discharge of legally enforceable debt or liability. Being aggrieved, the

appellant has preferred this appeal.

7. I have heard the submissions advanced by learned counsel representing the parties and further perused the record and proceedings. On due consideration of the submissions advanced, I am of the view that no case is made out to interfere with the Judgment and order passed by the trial Court. It is quite settled position in Law that while dealing with the Appeal against the acquittal, the Appellate Courts are expected not to interfere with the Judgment and Order passed by the trial Court unless the reasons and findings recorded by trial Court are perverse and unsustainable in Law. The appellant has to make out sufficient grounds to call for interference with the Judgment and order passed by the trial Court. If the reasons and findings recorded by the trial Court are based upon due appreciation of evidence adduced in the case, then the Appellate Court is not expected to interfere with the same unless same are erroneous and contrary to evidence on record. If two views are possible and the trial Court has taken one of such

view, then the appellate Court is not expected to interfere with such findings of acquittal recorded by the trial Court.

8. If we consider the overall case of complainant then the complainant has approached with the case that on 9th May, 2001, accused approached him with a request to provide hand loan of Rs.50,000/-. On account of friendly relations, the complainant provided him hand loan of Rs.50,000/- without obtaining any document acknowledging the receipt of hand-loan. It is the case of the complainant that accused agreed to repay the said amount within one month and issued post dated Cheque of Rs.50,000/-, which was dishonoured when presented for its encashment. Whereas the defence of accused is that he never approached complainant for seeking hand-loan nor issued cheque towards repayment of such loan. According to accused, the complainant has misused the blank signed cheque obtained towards security of loan of Rs.10,000/- advanced to one Moin Ansari.

9. If we consider the evidence adduced by the complainant, then the fact is not in dispute that there is no documentary evidence to prove that the hand loan of Rs.50,000/- was advanced to accused on 9th April, 2001. The entire case of complainant based upon oral testimony of complainant. Although the complainant has claimed that in the year 2001 he was doing business of plotting as well running his own Cinema theater, the complainant has failed to submit any docmentary evidence to show that the loan of Rs.50,000/- was advanced to accused. It is brought on record through the cross-examination of the complainant that the complainant is Income Tax payee since 18 to 20 years. The transaction in question was not reflected/shown by him in his income-tax return. He has admitted that he had given loan of similar nature to 4 to 8 persons. He expressed his inability to tell the exact number of cases he has filed in the Courts under Section 138 of Negotiable Instruments Act. He has not specifically denied the suggestion given to him that he has filed 25 to 40 cases under Section 138 of the Negotiable Instruments Act in the

Court at Parbhani. He has deposed that he do not remember the number of cases filed by him in the Court at Parbhani. He has deposed that he is not maintaining record of such transactions.

10. In cross-examination, the complainant has admitted that prior to the transaction of giving loan of Rs.50,000/- to accused, there may be some transaction with the accused. He admitted that he has not obtained licence to conduct money lending business.

11. On due consideration of the evidence, the trial Court had arrived to a conclusion that the complainant has failed to discharge the burden to prove that the Cheque in question was issued in discharge of legal liability or debt. The copy of the Judgment and order passed in Summary Trial Case No.1634 of 2000 in between the same parties i.e. the complainant and accused, produced on record by accused makes it difficult to believe that such hand-loan was advanced by complainant to accused. By the said

Judgment, the accused was acquitted in a complaint filed under Section 138 of the Negotiable Instruments Act by the same complainant in respect of another transaction of similar in nature. In the said case, the complainant had claimed to have advanced hand loan of Rs.1,00,000/- to the accused on 20th March, 2000. The cheque issued by accused dated 20th April, 2000 towards repayment of said amount was dishonoured. On failure to comply with the notice, he filed complaint. It is pertinent to note that the statutory notice was issued to the accused on 9th May, 2000. Since after service of notice, the repayment was not made, the complainant filed the previous complaint as Summary Case No.1634 of 2000. While said case was pending, the alleged loan of Rs.50,000/- was claimed to be advanced, which the trial Court found to be not believable. On the basis of overall evidence and particularly during the pendency of proceeding of dishonour of cheque of Rs.1,00,000/- advancing further amount of Rs.50,000/- to same accused found to be not convincing to accept the case of complainant.

12. I have considered the entire evidence on record. I am of the view that the findings recorded by the trial Court are in consonance with the evidence on record. There is absolutely no perversity in the reasons and findings recorded by the trial Court. It is difficult to believe the case of the complainant that while Cheque of Rs.1,00,000/- was dishonoured and the complaint was pending against the accused, the complainant had advanced the hand loan of Rs.50,000/- to the accused on 9th April, 2001. Thus, on due consideration of the evidence, I find no merit in the appeal filed by the complainant. I am, therefore, inclined to dismiss the Appeal. Accordingly, the Appeal is dismissed. Rule discharged.

(V.L. ACHLIYA, J.)

SRM/20/7/17