IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO.76 OF 2013

Pragati Credit Co-operative Society Limited,
Katol, through its Authorised Signatory
and Power of Attorney Shri Pramod Annaji
Nasare, Aged about 37 years,
Occupation-Service, R/o. Katol,
District-Nagpur. .. Appellant
(Original Complainant)

VERSUS

1] Ganesh s/o Marotrao Neware,
Aged – Adult,
Occupation-Business,
R/o. Ridhora, Tahsil-Katol,
District-Nagpur. (Original Accused)

2] State of Maharashtra, through Police
Station Officer, Katol P.S. Katol,
District-Nagpur. .. Respondents

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Shri J.D. Bastian, Advocate h/f Shri M.B. Naidu, Advocate for Appellant,
Mrs. A.R. Kulkarni, APP for respondent no.2,
None for respondent no.1 though served.

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CORAM : MRS. SWAPNA JOSHI, J.
DATED : FEBRUARY 14, 2018.

ORAL JUDGMENT

1] This appeal has been directed against the judgment and order dated 29.12.2011 passed by the learned Judicial Magistrate, First Class, Katol in Summary Criminal Case No.622 of 2004 thereby the learned JMFC has acquitted the accused under Section 138 of the Negotiable Instruments Act. Against the said judgment and order, the original complainant has filed the present appeal.

2] Heard Shri Bastian, learned counsel for the appellant and Mrs. A.R. Kulkarni, learned APP for the respondent no.2. Respondent no.1 remained absent.

3] The facts giving rise to the appeal may be stated in nutshell as under :

The appellant-original complainant (hereinafter referred to as 'Complainant') is a cooperative society duly registered before the Assistant Registrar of Societies having registration No.911/1999. The respondent no.1-original accused (hereinafter referred to as 'accused') had applied for the loan to the complainant. Accordingly, the complainant sanctioned the loan of Rs.48,002/- to the accused in August, 2000. The accused withdrew the said amount from the complainant-society on the basis of the agreed terms and conditions between the parties. Towards the part payment of the loan amount, accused issued Cheque of Rs.28,900/- payable on 10.2.2014 bearing Cheque No.069617 of the Nagpur District Central Co-operative Bank Limited, Branch Nagpur. The complainant presented the said cheque on 23.6.2004 with Shikshak Sahakari Bank Limited, Branch Katol for its realization, however, it was dishonoured due to insufficient funds in the account of the accused. It is the case of the complainant that although the complainant was aware that there were no sufficient funds in his bank account, still he issued the said cheque and has intentionally not taken any steps to honour the said cheque. The complainant issued the legal notice on the accused on 24.7.2004 calling upon him to pay the said amount in question to the complainant within 15 days from the date of receipt of the said notice. The accused received the said notice on 27.7.2004. However, he did not reply to the said notice nor paid the said amount to the complainant. The complainant lodged the complaint against the accused on 6.9.2004.

4] Learned Advocate for appellant-original complainant vehemently argued that the respondent no.1-accused has not disputed that he has taken the loan amount from the appellant-bank. Respondent no.1 has failed to repay the loan amount and it is also not disputed that the cheque which was issued in the name of appellant-bank, was bounced. He further contended that the learned trial judge has not considered this aspect and has acquitted the accused illegally.

5] As against this, learned APP for respondent no.2 supported the judgment of the learned trial court. She pointed out to the court that the vehicle of the respondent no.1 was seized by the appellant and the loan amount was thus recovered from him.

6] I have gone through the record of the case with the assistance of the learned counsel for both the sides.

7] It is not seriously disputed that in the year 2000, the accused had taken a loan for vehicle from the complainant-bank. It is the case of the complainant that at the time of sanctioning loan, the complainant-bank has obtained five blank cheques by way of security. The complainant-bank has asked him to open saving account in the complainant society itself. Accordingly, the saving account was opened for which the complainant issued a pass book, which indicates the entry of depositing of Rs.18,000/- by the accused at the time of opening of the account. According to the accused, he had issued five blank cheques of his signature to the complainant of his account in the name of Nagpur District Co-operative Bank, Nagpur. The disputed cheque was issued by the accused towards the security. It's the case of accused that he had repaid total loan amount due to the complainant time to time up to 2003. However, after 2003, he was not liable to pay any amount to the complainant. Consequently, the accused has not produced any receipt showing that he had repaid the amount towards the repayment of the loan.

8] The testimony of witness produced by the accused deposed that he was President of complainant society in the year 2000. He stated that it was the procedure of the bank while granting loan of the vehicle to obtain five blank cheques and some amount from the borrower. According to him, the accused had visited the bank to get the loan sanctioned and the accused used to repay the said amount. Thus, the testimony of the said witness makes it clear that accused was repaying the loan amount regularly from 2000-2002. The said testimony of witness Ashok Rewatkar as well as the accused takes support from the documentary evidence Exh.37.

9] It is significant to note that the complainant has also admitted that at the time of disbursement of loan, the complainant used to open saving account of the borrower in their society. The accused has deposited the amount of Rs.18.000/- in his account bearing No.76 on 19.8.2000. Interestingly, the complainant admitted that they had sold the vehicle of the accused in the public auction for recovery of the said outstanding amount and the vehicle of the accused was sold in auction for the amount of Rs.16,100/-. The complainant failed to produce the statement of account of the accused to show his liability. Thus, the testimony of complainant supports the case of the accused to some extent. The learned trial judge has rightly considered this aspect and has come to the conclusion that the loan amount of Rs.48,000/- was sanctioned to the accused in the year 2000 to purchase a vehicle. According to the complainant, the loan amount was outstanding. The accused was saving account with the complainant with a balance amount of Rs.18,000/-. The vehicle belonging to the accused was seized and sold in the public auction and an amount of Rs.16,100/- was recovered by selling the vehicle of the accused. The learned trial judge has also observed that the complainant has not produced any notice on record to show that prior to the date of issuance of cheque, the complainant has issued a notice to the accused for the payment of outstanding loan amount.

10] Pertinently the disputed cheque was dated 10.2.2004, however, it was presented on 23.6.2004 which indicates that after the due date, the said cheque was presented by the complainant i.e. after the period of four months which raises doubt about conduct of the complainant. There is no reason as to why the said cheque was not presented prior to the said date. Thus, overall evidence shows that the cheque was issued by the accused towards the security and, therefore, the cheque does not come within the purview of Section 138 of the Negotiable Instruments Act. Consequently, the complainant has failed to prove that the cheque of Rs.28,900/- dated 10.2.2004 was drawn by the accused for discharge of legal liability.

11] The learned Advocate for appellant failed to point out any illegality or perversity in the impugned judgment passed by the learned trial court. By now, the law is well-settled in respect of the appeal against acquittal. If on appraisal of evidence and on considering relevant attending circumstances, it is found that two views are possible, rule of prudence is, not to disturb the order of acquittal passed by the trial court, unless the conclusions of the trial court on evidence on record are found to be unreasonable, perverse or unsustainable.

12] In my view, the learned Magistrate of the Court below has correctly appreciated the facts brought on record by the prosecution. Further, the learned APP has fairly stated that there is no perversity in the judgment of acquittal. On re-appreciation of the entire prosecution case, I am of the view that, nothing is brought on record to upset the finding and order of acquittal passed by the learned Magistrate. Consequently, the Appeal fails and is dismissed.

JUDGE

Gulande