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

CRIMINAL APPEAL NO.82 OF 2013

Santaji Yuvak Credit Co-operative Society
Maryadit, Katol through its Power of
Attorney Shri Milind Panjabrao Choudhari,
Aged about 45 years, Occupation-Service,
R/o. Katol, District-Nagpur. .. Appellant
(Original Complainant)

VERSUS

1] Ashok s/o Namdeorao Kamdi,
Aged about 45 years,
Occupation-Labour,
R/o. Maramay Nagar
(Zopad Patti), Katol,
District-Nagpur. (Original Accused)

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

…......

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.

…......

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

ORAL JUDGMENT

1] This appeal has been directed against the judgment and order dated 1.2.2012 passed by the learned Judicial Magistrate, First Class, Katol in Summary Criminal Case No.299 of 2007 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-original complainant and Mrs. A.R. Kulkarni, learned APP for the respondent no.2-State. Respondent no.1 remained absent.

3] Learned Advocate for the appellant-original complainant contended that the judgment and order passed by the learned trial judge is illegal and perverse, inasmuch as the learned trial judge has not considered the evidence before the court in right perspective.

4] The learned APP supported the judgment passed by the learned trial judge.

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

The loan amount of Rs.55,000/- was given to the accused by the complainant in the year 2004. The accused failed to repay the instalment regularly. On demand by the complainant, the accused drew a cheque of Rs.34,200/- on 28.1.2007 towards part payment of outstanding dues. The said cheque was presented by the complainant in the bank on

5.2.2007, however, it was dishonoured on 7.2.2007 for the reason 'insufficient funds'. The complainant made a demand of cheque amount by notice dated 3.3.2007 which was served upon the accused, however, accused failed to pay the cheque amount. Hence, the complaint.

6] With the assistance of the learned counsel of both the sides, I have gone through the case papers.

7] It is not in dispute that the accused had signed the cheque. It is also not in dispute that the notice was issued by the complainant on 3.3.2007. It was, however, denied by the accused that the said notice was served upon him on 5.3.2007. The defence of the accused is that a blank cheque of his signature was given by him to the complainant as a collateral security while obtaining the loan. However, the complainant has made out a false case by misusing blank cheque and filling the said blank cheque.

8] In this context, it is noticed that the complainant has admitted that on 28.1.2007, the accused had visited his office and after calculating the interest and outstanding amount, it was informed to the accused that an amount of Rs.34,200/- was outstanding against him. The complainant, however, failed to point out from the extract of the account (Exh.33) that on 28.1.2007, the amount of Rs.34,200/- was outstanding against the accused. The said version of the complainant indicates that on 28.1.2007, the accused was required to repay the amount of Rs.34,200/- only, whereas the extract

Exh.33 indicates that the outstanding balance was of Rs.51,712/- on 31.3.2005 and the subsequent entry of dated 26.5.2007 of Rs.53,412/-. Thus, there is discrepancy in the oral testimony of the complainant as compared to the bank statement. It is thus not clear as to on what basis the complainant informed to the accused that on 28.1.2007 the outstanding amount was only of Rs.34,200/-. In the light of the defence of the accused of delivering of blank cheque at the time of obtaining loan as a collateral security appears to be probable one. Similarly, the case of the complainant about delivery of the cheque by the accused on 28.1.2007, for part payment of outstanding amount is not found to be convincing.

9] It is significant to note that the cheque deposit slip (Exh.29) is in the handwriting of the employee of the complainant-society. There is no evidence on record to show that cheque (Exh.28) was prepared in the presence of employee of the complainant. It is interesting to note that the handwriting of the amount written in figures and words in cheque Exh.28 and the cheque deposit slip Exh.29 are of the same person i.e. the employee of the complainant, as per the opinion of the learned trial judge. Thus, the complainant has failed to prove that the accused has drawn the cheque Exh.28 towards discharge of legal liability. On the contrary, the accused has proved that the cheque Exh.28 was delivered by him to the complainant towards the collateral security at the time of sanction of loan amount. The said cheque was not for discharge of liability as per the requirement under Section 138 of the Negotiable Instruments Act. The learned Advocate for appellant failed to point out any illegality or perversity in the judgment passed by the learned trial Judge.

10] In the case of **Mahendra Pratap Singh vrs State of Uttar Pradesh** reported in **(2009) 11 SCC 334**, the Hon'ble Apex Court has held that, if on appraisal of evidence and on considering relevant attending circumstances, it is found that two views are possible, one for acquitting accused and other for convicting accused, in such a situation, rule of prudence should guide High Court not to disturb order of acquittal made by trial Court, unless conclusions of trial Court drawn on evidence on record are found to be unreasonable and perverse or unsustainable, the High Court should not interfere with the order of acquittal.

11] In view of above circumstances, the appeal filed by the original complainant deserves to be dismissed. Hence, the following order is passed.

O R D E R

Criminal Appeal No.82 of 2013 is dismissed.

JUDGE

Gulande