IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.93 OF 2002

Shri Prabhakar Shankar Ghongade)
Age : 36 years. Occ.: Service)
Manager Adarsh Finance and Investment)
Corporation, Sangola)
R/o/ Sangola, Tal. Sangola, Dist. Solapur) ….Appellant/Complainant

V/s.

1. Shri Sanjay Ratilal Marade)
Age : 31 years. Occ.: Business)
R/o. Shivaji Chowk, At Post and Tal. Sangola)
District Solapur)

2. State of Maharashtra) ….Respondents/Accused

Mr. Omkar Nagvekar i/b. Adv. P.R. Arjunwadkar for appellant.
Mr. S.G. Kudle for respondent no.1.
Ms. Anamika Malhotra, APP for State – respondent no.2.

CORAM : K.R.SHRIRAM, J.
DATE : 10th DECEMBER 2019

ORAL JUDGMENT :

1 This is an appeal impugning an order and judgment dated 21st September 2001 passed by the Judicial Magistrate First Class, Sangola, acquitting accused for offence punishable under Section 138 (*Dishonour of cheque for insufficiency, etc., of funds in the account*) of the Negotiable Instruments Act. Of course complainant had also alleged offence under Section 420 (*Cheating and dishonestly inducing delivery of property*) of the Indian Penal Code but none of the ingredients required for Section 420 of the Indian Penal Code was spelt out.

2 Appellant (hereinafter referred to as complainant) is the Manager of Adarsh Finance Corporation (AFC). Respondent (hereinafter

referred to as accused) borrowed money from AFC five times and the amount of loan was varied. It is the case of complainant that the last loan, which was sanctioned on 5th March 1999 based on an application dated 1st March 1999 of Rs.1 lakh, was repayable after 90 days with 18% interest. According to complainant, accused repaid Rs.17,700/- leaving a balance as on 18th August 2000 a sum of Rs.82,300/- of the principal amount and Rs.20,496/- as interest. The amount was not repaid on the due date but accused gave a cheque on 20th August 2000, dated 19th August 2000 bearing no.025434 drawn on Vita Merchant Co-operative Bank (subject cheque) for the entire outstanding amount of Rs.1,02,796/- in full and final payment of the outstanding. When the cheque was deposited, it came to be dishonoured with the endorsement "account closed". Complainant gave the statutory notice as required, which was replied to by accused denying liability and hence, the complaint.

3 The stand of defence was accused never borrowed any money on 5th March 1999 and therefore, nothing was payable. According to accused, he had taken loan four or five times earlier and the cheque, which was used by complainant, was a stolen cheque and complainant had stolen this cheque. The learned Magistrate, after considering the evidence, has dismissed the stand of accused that he never took any loan or no amount was payable or he did not repay even Rs.17,700/- or the cheque was stolen. The other stand of accused was that he had given a blank cheque as security containing only his signature to AFC when he took the first loan in 1997 and

when he repaid the first loan, the blank cheque was not returned to him despite his request and the same blank cheque was used as security for successive loans which he had taken. Therefore, the cheque in question was not issued in discharge of any legal liability and therefore, no offence under Section 138 of the Negotiable Instruments Act has been made out. This stand of accused has appealed to the Trial Court and the Trial Court dismissed the complaint and acquitted accused. I agree with the view of the Trial Court. It is settled law that if two views are possible, the view, which is beneficial to the accused, will be the correct view to be adopted. If two views are possible, the Appeal Court should also not interfere in an order of acquittal.

4 To prove its case, complainant led evidence of five witnesses and the defence led evidence of accused. The evidence of PW-1, who is complainant and PW-4, who was the Manager of Vita Merchant Co-operative Bank, Sangola, are most relevant. Vita Merchant Co-operative Bank is the bank on whom the cheque was drawn. PW-1 says that in discharge of his liability of Rs.1,02,796/- accused gave a cheque bearing no.025434 dated 19th August 2000 on 20th August 2000 and when the cheque was presented, the cheque was returned with the endorsement “account closed”. In the cross examination, PW-1 admits that he had known accused for two years and accused might have raised loan for four or five times and he has got all the necessary documents prepared. Of course PW-1 says that they never took any blank cheque as security. In the cross examination, PW-1, though he has been a Manager of AFC for five years and he had known accused for two years

and that accused had taken loan four or five times, initially states he does not remember whether accused had taken a loan on 27th September 1995 or 10th March 1997 or whether those loans have been repaid. But when the passbooks showing the accounts having been closed on repayment of the entire amount of loan was shown, PW-1 agreed that those loans have been repaid in full. I am highlighting this because as a Manager and who has sanctioned all the loans and who has received the loan applications, I am sure, PW-1 would have known that accused had repaid the amounts but he still gave evidence as if he was not aware whether the amounts have been repaid, which he agreed, when he was confronted with the passbooks. This witness has been, therefore, economical with truth and this witness states that the subject cheque was given to him on 20th August 2000. Now if we compare this statement with the stand taken by accused that this was a cheque, which was given as security, when he took the first loan and the bank account with Vita Merchant Co-operative Bank was closed on 26th April 1999 because the partnership business, which he started with his brother on 14th June 1989, was dissolved on 30th March 1998, is more believable.

5 PW-4, the Manager of Vita Merchant Co-operative Bank, has stated that the subject cheque and another cheque were returned for the same reason, i.e., account closed. PW-4 has in his cross examination stated that on 4th December 1996 the first cheque book bearing cheque leafs no.025431 to 025440 was issued to accused. The subject cheque is 025434. PW-4 also states that in all nine cheque books were issued to accused. PW-4

also says cheque no.025433 was used and encashed on 21st December 1996 and on 10th March 1997, accused withdrew Rs.1 lakh by cheque no.025435. Therefore, the cheque before the subject cheque was issued and encashed on 21st December 1996 and the one after the subject cheque was issued and encashed on 10th March 1997. Complainant says that the subject cheque was given to him on 20th August 2000 when the account has been closed on 26th April 1999. PW-4 also states that the last cheque from the first cheque book, which the bank had issued, was used by accused on 10th June 1997 and on the very day, accused produced requisition for issuance of new cheque book. The new cheque book containing cheque nos.028441 to 028450 was issued and the cheques from that cheque book were used by accused from 19th June 1997 to 16th October 1997. There is also a certificate issued by the Branch Manager on 13th September 2000 that the account was closed and the last cheque book was also obtained by bank from accused when accused had withdrawn the balance in the account on 26th April 1999 using the cheque no.1002625 and closed the account. PW-4 says it was the last cheque from the cheque book given to accused.

6 Though there is no bar for a person to use a cheque from an old cheque book, it is natural that a person will use the cheque from the last cheque book or a second last cheque book. It is most unnatural for a person to issue a cheque from the first cheque book, which was given to him four years before, and after first cheque book he has requisitioned and taken eight cheque books because PW-4 says in all they had issued nine cheque books to

accused. Infact the counterfoil that is filed by accused shows that cheque no.025433 was a self cheque issued on 21st December 1996 for Rs.50,000/- and the account extract Exhibit 43 shows that this cheque was debited on 31st December 1996. The counterfoil for cheque no.025434, the subject cheque, is dated 10th March 1997 and the amount is blank. The next cheque no.025435 is also a self cheque encashed in March 1997. The next cheque no.025436 is dated 16th April 1997, which is also blank but the payee's name is written as Shree Finance Corporation. Cheque no.025437 was encahsed in April 1997. Cheque no.025438 was encashed in May 1997 and cheque no.025439 is dated 9th June 1997, which is drawn in the name of Mahuli Finance Corporation but no amount is mentioned. That cheque has not been encashed. The last cheque in the first cheque book, i.e., cheque no.025440, was a self cheque dated 10th June 1997 and encashed in June 1997 itself. The account extract thus shows that the cheques issued before and after the subject cheque are encashed. The counterfoil also shows that all other cheques are as per serial number. Therefore, the subject cheque no.025434 must have been issued in March 1997 and not in August 2000 is more believable. In such a case, accused could not have filled in the figure in August 2000 for repayment of a loan allegedly taken in March 1999. Therefore, the subject cheque cannot be stated to have been issued for discharging a legal liability under the last loan that he took. It is not complainant's case that in August 2000, the loan raised in 1997 was due. Therefore, there is reason to believe that AFC has wrongfully used a cheque issued in 1997 for a loan, which was sanctioned only in 1999. Complainant has not proved the most important ingredient of Section 138 of the Negotiable Instruments Act when that cheque is to be issued for discharge in whole or in part of any other legally enforceable debt or liability. The loan taken on 5th March 1999 repayable after 90 days could not have been repaid with a cheque issued in 1997. Accused deserves the benefit of doubt.

7 The Apex Court in ***Chandrappa & Ors. V/s. State of Karnataka***[1] in paragraph 42 has laid down the general principles regarding powers of the Appellate Court while dealing with an appeal against an order of acquittal. Paragraph 42 reads as under :

> *"42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;*
>
> *(1) An appellate Court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded;*
>
> *(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;*
>
> *(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.*
>
> *(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.*

1. (2007) 4 SCC 415

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

8 There is an acquittal and therefore, there is double presumption in favour of accused. Firstly, the presumption of innocence available to accused under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, accused having secured acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the Trial Court. For acquitting accused, the Trial Court observed that the prosecution had failed to prove its case.

9 In the circumstances, in my view, the opinion of the Trial Court cannot be held to be illegal or improper or contrary to law. The order of acquittal, in my view, cannot be interfered with. I cannot find any fault with the judgment of the Trial Court.

10 Appeal dismissed.

(K.R. SHRIRAM, J.)