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

Criminal Appeal 230/2010

Kapileshwar Gramin Sahakari Pat Sanstha, Ashti,
through its Branch Manager Vittal Ramkrushna Gandhre,
Aged 36 years, Occ-Service, R/o.-Ashti, Tah. Ashti,
Distt. Wardha. …. Appellant.
(Ori. Complt.)

-Versus-

Abdul Hamid S/o Abdul Bashir,
aged about 45 years, Occ.-Business,
Proprietor of Vidarbha Traders, Near Gujari Market,
At & Post Ashti, Tah. Ashti, Distt. Wardha. …. Respondent
(Ori. Accused)

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Mr. V.T. Deshpande, Advocate for appellant.
Mr. S.R. Agrawal, Advocate for respondent.

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CORAM : ROHIT B. DEO, J.
DATE : August, 26, 2021.

Oral Judgment

The appellant Kapileshwar Gramin Sahakari Pat Sanstha (hereinafter referred to as, 'the complainant') is assailing the judgment dated 29-01-2010 rendered by learned Judicial Magistrate First Class, Ashti in Sum. Criminal Case 295 of 2008 whereby the respondent (hereinafter referred to as, 'the accused') is acquitted of offence punishable under Section 138 of the Negotiable Instruments Act, 1889 (Act).

2. The cheque in dispute is allegedly issued to discharge existing

debt of ₹ 84,179/- (₹ Eighty Four Thousand One Hundred Seventy Nine). The case of the complainant is that pursuant to the application preferred by the accused, loan of ₹ 50,000/- was sanctioned and disbursed. The accused defaulted in the payment of installments, and the complainant ultimately deposited the cheque which was dishonoured.

3. The accused took a bold defence, which is that, while he did apply for loan, the request was rejected, and as of fact the amount sought was not disbursed and/or paid.

4. In the context of the submission, I have perused the evidence on record with the assistance of the learned Counsel for the complainant and the accused. It is difficult to accept the submission of the accused that he did not receive any amount towards loan. The documentary evidence on record belies such a submission.

5. However, the evidence on record clinchingly establishes that the accused deposited with the complainant a blank cheque. It appears that the figure of ₹ 84,179/- is filled in, not by the accused, but by the officer/s of the complainant. Notably, the complainant issued notice dated 14-02-2008 putting the accused on notice that since amount of ₹ 71,623/- is due and payable, cheque for the corresponding figure shall be deposited. It appears, that the complainant did not proceed further and on the premise that the amount of principal and the interest had augmented to ₹ 84,179/- as on 28-07-2008, filled in the cheque the said figure and presented the

cheque for payment.

6. The learned Counsel for the complainant is right in the submission that if blank cheque is delivered, an implied authority to fill in the amount is statutorily recognized. But then, the amount which is filled in must be strictly the debt which is existing and legally enforceable. In the present case, the complainant was duty bound to prove that as on the date of presentation of the cheque amount of ₹ 84,179/- or more, was outstanding in the account of the accused.

7. I have perused the material on record, and having done so I have no hesitation in recording, that it is not proved by documentary evidence in the form of the relevant accounts that an amount of ₹ 84,179/- or more, was due and payable by the accused. In this view of the matter, the finding recorded that the existing of legally enforceable debt is not proved, suffers from no infirmity.

8. The learned Magistrate has taken a possible and plausible view. The presumption of innocence is only fortified by acquittal. I do not see any reason to interfere with the judgment of acquittal.

9. The appeal is dismissed.

JUDGE

Deshmukh