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

CRIMINAL APPEAL NO.487 OF 2007

Appellant : **Shri Navdurga Nagari Sahakari Patsanstha Ltd.,**
Main Branch Dhamangaon Rly.,
Through its Authorised Officer, Deepak S. Shinde,
R/o Dhamangaon Rly., Dist. Amravati.

-- Versus --

Respondent: **Ramarao Vishnuji Rajurkar,**
Aged Adult, Occupation : Business,
R/o Dhanora, Shikara Post Sultanpur,
Tahsil Navegaon Khandeshwar, District Amravati.

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Shri S.P. Deshpande, Advocate for the Appellant.
Shri S.D. Tatake, Advocate for the Respondent.
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CORAM : SMT. ANUJA PRABHUDESSAI, J.
RESERVED ON : 3rd FEBRUARY, 2021.
PRONOUNCED ON : 8th MARCH, 2021.

J U D G M E N T :-

The Appellant herein has challenged the judgment, dated 26/07/2007, whereby learned J.M.F.C. has acquitted the Respondent of offence under Section 138 of the Negotiable Instruments Act (hereinafter shall be referred to as the 'Act' for short).

02] The Appellant and the Respondent shall be hereinafter referred to as the Complainant and Accused respectively.

03] The Complainant is a Patsanstha engaged in banking business. It is the case of the Complainant that on 11/06/1998, it had advanced to the Accused loan of Rs.30,000/- which was repayable with interest @ 18% per annum. The Accused failed to repay the amount and the outstanding dues as in the year 2005 were Rs.56,000/-. The Accused issued a cheque dated 20/09/2005 towards repayment of the said amount. The said cheque was dishonoured for “insufficient funds”. The Accused failed to repay the amount despite receipt of the statutory notice. The Complainant, therefore, filed a complaint under Section 138 of the Act.

04] The defence of the Accused is that the Complainant had released loan of Rs.27,000/- which has been repaid from time to time. He claims that no amount was due and that the cheque relied upon by the Complainant was given as security at the time of obtaining the loan in the year 1998.

05] The learned J.M.F.C., after considering the evidence adduced by the Complainant as well as by the Accused, acquitted the Accused on the ground that the Complainant had admitted having advanced loan only of Rs.27,000/-, and further having received Rs.14,000/- from the Accused towards repayment of the loan. The Ld. Judge has held that the said amount is not reflected in the account extract at Exhibit 14. Ld. JMFC has held that the subject cheque was issued in the year 1998. It is further held that the Complainant has failed to prove that the debt was recoverable after a period of three years. The learned Judge, therefore, held that the presumption stands rebutted and, hence, acquitted the accused of offence under Section 138 of the Act. This judgment is under challenge in this appeal filed under Section 378 of the Code of Criminal Procedure.

06] Heard learned Counsel for the Complainant. Perused the records.

07] At the outset, it may be mentioned that this is an appeal against an order of acquittal. It is well settled that the Appellate Court can interfere with the order of acquittal only in exceptional cases and compelling circumstances, keeping in mind the presumption of innocence of the accused and further that the trial Court acquittal bolsters presumptions of innocence, the order of acquittal cannot be interfered with in a routine manner where two views are possible.

08] The Appellant had filed the complaint under Section 138 of the Act alleging that the Respondent had issued a cheque towards repayment of outstanding loan of Rs.56,000/-. In the course of the evidence, the Complainant had admitted that though the loan amount was sanctioned for Rs.30,000/-, only an amount of Rs.27,000/- was disbursed as loan amount. He has stated that the balance amount of Rs.3,000/- was retained as membership fee, which was to be refunded upon repayment of the loan. He has admitted that the Respondent-Accused had from time to time paid an amount of Rs.14,000/- towards repayment of the loan. The said amount is not reflected in the statement of accounts, extract of which is produced at Exh.40. The statutory notice also does not make any reference to the amount paid by the Accused towards repayment of loan. It is under these circumstances, learned Magistrate has recorded a finding that the Appellant has not come up with clean hands and that the Respondent-Accused has rebutted the presumption under Sections 118 & 139 of the Act.

09] It is also pertinent to note that the Accused had taken a defence that he had issued the said cheque towards security of repayment of loan and that the said cheque was misused by the Complainant. The Respondent-Accused had examined Rajkumar Bhaksare, who was a witness to the said loan transaction. He has deposed that the complainant had taken a blank cheque from the Accused. This is fortified by an admission in the cross-examination of PW-1 that the contents of the cheque are not in the handwriting of the accused and that the same were written by one of the employees of the Complainant-Bank.

10] As stated earlier, the Complainant had admitted that out of total amount of Rs.27,000/- received by the Accused, he had repaid loan of Rs.14,000/-, which amount is not reflected in the Statement of Extract. This fact raises a doubt about outstanding dues of Rs.56,000/-. Learned Magistrate was, therefore, justified in holding that the accused had rebutted the presumption. The view taken by learned Magistrate is plausible and does not warrant interference in the appeal against acquittal. Hence, the appeal is dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)

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