IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 370 OF 2006

Mr. L. J. J. Lewis,
Age : 55 Years, Occupation : Business,
Residing at : 1001, Kailash Tower,
Shiv Bhagtani Manor, Near S.M. Shetty
School, Powai, Mumbai. … Appellant

Versus

1. Mr.Jyotheendran K.N.
Age – Adult, Occupation : Business,
Residing at : F/7/8, Sector 4E/A,
Kalamboli, New Mumbai.

2. The State of Maharashtra … Respondents

Mr.Rajiv Patil – Senior Advocate i/b. Mr.Anand Kulkarni a/w Mr.Ojas Kocharekar, Advocates for Appellant.
Mr.Manoj Mohite – Senior Advocate a/w Mr.Sunit P. Pilloy i/b. Mr.P.G.Pravin, Advocates for Respondent No.1.
Mr.H.J.Dedhia, APP for the Respondent No.2 – State

CORAM : S. M. MODAK, J.

DATED : 7nd DECEMBER, 2022

<u>P. C.</u> :-

1. Heard learned Senior Advocate Shri.Rajiv Patil for the Appellant-Complainant, learned Senior Advocate Shri.Manoj Mohite for Respondent No.1 – Accused and learned APP for the Respondent No.2 - State.

2. The Court of Metropolitan Magistrate, 10th Court, Andheri, Mumbai as per the judgment dated 14th October, 2005, has acquitted the

Accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. He was acquitted mainly for the reason that cheque was not issued in discharge of debt or liability which is legally recoverable debt or liability. So, only the issue involved in this Appeal is ; whether the finding by the learned Metropolitan Magistrate on that aspect is proper or not and ; whether on the basis of available evidence, it can be said that cheque was issued for a legally recoverable debt or liability.

3. The Complaint was filed by the present Appellant before the Court of Metropolitan Magistrate, Andheri. It was filed for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. The cheque in question dated 2nd March, 2000 for Rs.21,00,000/- drawn on Union Bank of India was issued by Respondent-Accused in favour of the Complainant. On presenting, it was returned unpaid by the banker of the Accused for the reason "Refer to drawer". The mandatory notice dated 16th March, 2000 was issued. Accused gave reply dated 24th March, 2000. The Complainant examined himself and examined handwriting expert (in respect of signature and contents of cheque in question and signature on the receipt). Learned Magistrate acquitted the Accused for the reason that cheque was not issued towards discharge of legally enforceable debt or liability, but it was issued in discharge of time barred debt.

4. Learned Senior Advocate Shri.Rajiv Patil invited my attention to the contents of the notice reply dated 24th March, 2000, issued by the Accused to the Complainant. (Page No.43). The Accused has said that the Complainant had given him Rs.7,00,000/- against the settlement of Rs.5,00,000/- and this amount was paid towards the earlier debt. Out of

this Rs.7,00,000/-, Rs.2,00,000/- was given by the Complainant to the Accused towards personal loan. According to learned Senior Advocate Shri.Rajiv Patil, these averments amount to an acknowledgment of liability by the Accused to the Complainant and this was not considered by the learned Metropolitan Magistrate. In support of this contention, he relied upon the judgment in case of ***Damu Tudu and Ranjit Hembram V/s. Paschim Banga Gramin Bank and Another [2019 0 Supreme(Cal) 400]***.

5. According to learned Senior Advocate Shri.Manoj Mohite, this cannot be said to be an acknowledgment of liability as contemplated under Section 18 of the Limitation Act, 1963 (36 of 1963). According to him, in fact, these particulars do not denote any amount advanced by the Complainant to the Accused as pleaded in the Complaint. But, in fact, out of Rs.7,00,000/-, Rs.5,00,000/- was towards the repayment of the earlier debt and only Rs.2,00,000/- were advanced by way of personal loan. In addition to this, he also invited my attention to the averments in the notice reply to the effect that Accused has repaid that amount of Rs.2,00,000/- and only a blank cheque was given.

6. Learned Senior Advocate Shri.Manoj Mohite relied upon the following judgments :-

(i) Joseph V/s. Devassia [2000 SCC OnLine Ker 460]

(ii) Sasseriyil Joseph V/s. Devassia [Special Leave to Appeal (Crl.) No.1785 of 2001 : decided on : 10th September, 2001 : Supreme Court of India]

(iii) Smt. Ashwini Satish Bhat V/s. Shri Jeevan Divakar Lolienkar & Another [1999 SCC OnLine Bom 69]

(iv) Zaheeda Kazi V/s. Sharina Ashraff Khan [2007 SCC OnLine Bom 1453]

(v) Kamalaksha Laxman Prabhu V/s. S.G. Mayekar [2008 SCC OnLine Bom 1586]

(vi) The Bidar Urban Co-operative, Bank Ltd., Bidar V/s. Mr.Girish [ILR 2021 KAR 2437]

7. On this background, it will be material to consider the evidence adduced by the Complainant. In his affidavit, he has stated that he has paid Rs.7,00,000/- to the Accused by way of pay order on 29th February, 1996 and also obtained a receipt. The said receipt is on Page No.33. According to learned Senior Advocate Shri.Manoj Mohite, this receipt was neither referred in the notice nor in the affidavit, but was filed at belated stage and the Accused has disputed the signature on that receipt. According to him, this receipt was sent to the handwriting expert and he gave opinion that the signature appearing on the receipt does not belong to the Accused. It has also come in the cross-examination that the Accused has filed a complaint of forgery against him before Panvel Court. According to learned Senior Advocate, it is in respect of forgery of signature on that receipt. Whereas, according to learned Senior Advocate Shri.Rajiv Patil, his client i.e. present Complainant is acquitted by the Court of JMFC, Panvel.

8. For deciding the Appeal, we are concerned with, when did the Complainant advanced the money and when did that cheque was issued. As per the Complainant, the cheque bears the date of 2nd March, 2000 amounting to Rs.21,00,000/-. The Accused is also having serious objection how an amount of Rs.21,00,000/- was filled in the cheque. The

handwriting expert was also examined. The Accused has not examined any witness. On this evidence, learned Magistrate has observed that :-

> *"9. After considering submissions of both the advocates and going through the case laws and the evidence placed before me only point comes before me is that the cheque is regarding time barred debt and therefore, it is not legally enforceable liability. Admittedly the loan was given by the complainant to the accused on 29.02.1996 and the accused issued this cheque on 02.03.2000, which is admittedly beyond the period of three years which is prescribed under the Limitation Act for recovery of loan."*

Further, it is observed :-

> *"10. As it is arithmetically established that the cheque was beyond period of limitation it would not be enforced even U/sec.138 of N.I.Act because it is one issued for liability which is not legally enforceable liability".*

9. So before us, there are two documents ; one is receipt, the execution of which is denied by the Accused and ; second is the averments in the notice reply. Even if we consider the receipt, it bears the date of 29th February, 1996. Even the Complainant has said that he has advanced the amount in the year 1996. Admittedly, the cheque bears the date of 2nd March, 2000. It is true that as per the explanation to Section 138 of the Negotiable Instruments Act, 1881 (26 of 1881), debt or other liability means a legally enforceable debt or other liability. In case of ***Joseph V/s. Devassia (cited supra)***, the High Court of Kerala has stated this explanation and confirmed the order of acquittal for the reason that

cheque was issued towards the discharge of time barred debt. This decision is confirmed by the Hon'ble Supreme Court. Similar are the observations in other judgments relied upon by the Accused.

10. The High Court of Karnataka (Kalaburagi Bench) in case of ***the Bidar Urban Co-operative, Bank Ltd., Bidar V/s. Mr. Girish (cited supra)*** in Para No.36 has reproduced the observations of the Division Bench. Therein, the provisions of Section 18 of the Limitation Act and the provisions of Section 25(3) of the Contract Act were compared and it was held that the acknowledgment of debt under Section 18 of the Limitation Act has to be before expiry of the period. Whereas, under Section 25(3) of the Contract Act, it can be beyond the period. If we read the provisions of Section 18 of the Limitation Act, 1963 (36 of 1963), it says that it has to be before the expiration of the prescribed period for suit or application.

11. In case of ***Damu Tudu and Ranjit Hembram V/s. Paschim Banga Gramin Bank and Another (cited supra)***, the High Court of Calcutta has considered this aspect. My attention is invited to the observations in Para No.9. According to learned Senior Advocate Shri.Manoj Mohite, the facts are different. In that case, there is an agreement that money is to be repayable from 29th November, 2000. Whereas, there was acknowledgment by way of balance confirmation letter dated 28th November, 2013, whereas, the cheque was issued dated 6th May, 2015. It was held that new limitation period will start from 29th November, 2000. Hence, the cheque issued thereafter dated 6th May, 2015 can be said to be a cheque issued for legally recoverable debt or liability.

12. In this case, the averments in the notice reply are after issuance of

a cheque. If the money is advanced in the year 1996, it can be a legally recoverable within a period of three years. In case of ***Kamalaksha Laxman Prabhu V/s. S. G. Mayekar (cited supra)***, it has been clarified that merely giving a cheque without anything more will not revive a time barred debt. In this case, except the cheque, there was nothing produced before the trial Court by which it can be said that the Accused has acknowledged the liability within a period of three years from the year 1996. The admission given in the notice reply cannot be said to be an acknowledgment of liability falling within the purview of Section 18 of the Limitation Act. (Even for which, the Accused is having different explanation).

13. Therefore, I do not find that the findings of the trial Court are wrong. No case is made out for interference. Consequently, Appeal is dismissed.

(S. M. MODAK, J.)