

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

CRIMINAL APPEAL NO. 137/2019

APPELLANT : Prashant Mhanudas Mohite,
Aged about 45 years, Occ. Business,
R/o. Marathi Colony, Near Gopal Nagar
Tq. & Dist. Amravati, P.S.Rajapeth.

...VERSUS...

RESPONDENT: 1. Smt. Sumati Vijay Dhoke,
aged about 64 years, Occ. Business,
R/o. Narsiha Saraswati Nagar,
Near Gopal Nagar,
Tq. & Dist. Amrvati, P.S.Rajapeth.

Shri N.S.Warulkar, Advocate for appellant
Shri R.M.Sharma, Advocate (appointed) for Respondent.

CORAM : AVINASH G. GHAROTE, J.
DATE : 17/06/2022.

ORAL JUDGMENT

1] The appeal challenges the judgment dated 12.6.2018 passed by the learned JMFC (Court No.7) Amravati, whereby the complaint of the appellant under Section 138 of the Negotiable Instruments Act has been dismissed, and the respondent/accused acquitted of the said offence.

2] Mr. Warulkar, learned counsel for the appellant by inviting my attention to the documents placed on record submits that the giving of a hand loan is evinced by a loan agreement dated 30.1.2012 to which the respondent accused was a signatory and has been proved as Exh. 51. He further submits that one of the witnesses to this loan agreement namely Sharad Ramdas Junghare has been examined as CW-2 (page 39) who has in his evidence proved the contents of Exh.51. He therefore submits that there was written document between the parties under which the loan was advanced to the respondent. Inviting my attention to the impugned judgment, he submits that though the learned Trial Court had noted the loan agreement in para 10 and the evidence of CW-2 in para 11, however, the complaint has been dismissed only on the ground that the complainant had failed to explain from where he had arranged the amount of Rs. 2,50,000/- when he was not an income tax payee and no document was filed to indicate the source. He further submits that this is by ignoring the evidence of the complainant CW-1, who has stated that he was doing the business of Travel and Auto Parts under the name and style of Vidarbha Travels and Auto Deal, Sainagar, Amravati and therefore had sufficient funds available to

him to the tune of Rs. 2,50,000/- which was given as loan to the accused. He submits that this entire evidence has been ignored by the learned trial Court while passing the impugned judgment and the finding rendered in para 14 of the impugned judgment, is in ignorance of the aforesaid evidence which has come on record. It is further submitted that the signature of the accused on the said cheque was admitted by her, who had set up a defence that the said cheque and certain stamp papers were stolen from her office. She however categorically admits in the cross examination that in spite of the above plea taken, and her understanding that if one has misused the cheque or stamp paper that person has to lodge a report in the Police Station, which was never done by her either against the complainant or any other person. It is thus apparent that material evidence which was there on record has been overlooked and not considered by the learned trial Court.

3] Though the respondent has been served, however, none appears, in view of which learned counsel Mr.R.M.Sharma from the Legal Aid Panel has been appointed to represent him.

4] Mr. Sharma, learned counsel for the respondent vehemently opposes the appeal and submits that it was necessary for the complainant to disclose the source of income from which he had amassed the sum of Rs. 2,50,000/- which he claims to have given on loan to the accused. Since this has not been explained, the dismissal of the complaint on this ground, according to him, was fully justified.

5] Much can be said about the manner in which the evidence on record has been assessed by the learned trial Court. The impugned judgment indicates that though the loan agreement Exh. 51 has been noticed by the learned trial Court and so also the fact that CW-2 the witness to the same has been examined, there is absolutely no discussion regarding the effect of this document on the question of legal debt and liability. Merely because the complainant has failed to disclose the source of the amount in question, the admission on part of the accused that the cheque was signed by her and though a plea in defence was taken that it was stolen, there was no complaint whatsoever in this regard, has not been considered at all. I would have decided the appeal on its merit itself, however, considering that the Respondent is absent though served, it would be

appropriate in the nature of things to remand the matter to the learned trial Court, to hear the parties on the evidence laid and decide the same afresh from that stage, after due notice to the respondent/accused, so that she may have the proper representation of her choice, considering which the impugned judgment is hereby quashed and set aside and the matter is remanded back to the learned trial Court, who is directed to hear the parties on the evidence already laid and record appropriate reasons for its decision.

6] It is made clear that the parties would not be entitled to lead any further evidence before the learned trial Court and the remand is only for the purpose of rehearing the evidence and decide the matter.

7] Appropriate fee be paid to the appointed counsel as per the schedule.

JUDGE

Rvjalit

Digitally sign byRAJESH
VASANTRAO JALIT
Location:
Signing Date:20.06.2022 15:08