THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPEAL NO. 341/2021
Umesh Sukhdeoraoji Janbandhu ..Versus…Prabhakar Dhandbaji Kohle

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

Mr. R.N.Meshram, Advocate for the appellant
Mr. P.S.Tiwari, Advocate for respondent.

CORAM : AVINASH G. GHAROTE, J.
DATE : 21/06/2022

1] Heard Mr. Meshram, learned counsel for the appellant and Mr. Tiwari, learned counsel for the respondent.

2] The appeal challenges the judgment dated 27.11.2018 whereby the learned Magistrate has dismissed the complaint filed by the complainant/appellant under Section 138 of the N.I. Act.

3] Mr. Meshram, learned counsel for the appellant contends that the rejection is incorrect, as while answering point Nos. 1, 2 and 3, the learned Magistrate has found that the cheque was issued by the accused, which was drawn on the account maintained by the accused in Dena Bank, Khapa Branch, on account of discharge of a legally enforceable liability in respect of which the demand notice was issued and there was failure to meet the demand. He therefore submits that having rendered the above finding, it was necessary for the learned Magistrate to have convicted the accused and therefore the impugned judgment need to be quashed and set aside and the accused needs to be convicted.

4] Mr. Tiwari, learned counsel for the respondent submits that though the above findings have been rendered, what is material is that the cheque return memo issued by the bankers of the complainant was never proved, as a result of which the complaint has rightly been dismissed. He invites my attention to point no. 3, which holds that the notice of demand was not sent within a period of 30 days from the date of dishonour of the cheque.

5] I have perused the record with the assistance of the learned counsels. The accused had given a cheque of Rs.40,000/- bearing No. 386261, dated 30.12.2014 drawn on the Dena Bank, Khapa branch in favour of the complainant. The cheque was presented sometime in January 2015 by the complainant through its banker, the State Bank of India, who in turn had presented it to the Dena Bank. The same however was dishourned on 27.1.2015 for insufficient funds. The said cheque was again presented by the complainant on 2.3.2015, which came to be dishonoured under the memo issued by the Dena Bank on 4.3.2015. (this cheque return memo has not been exhibited before the trial court.) The State Bank of India issued a cheque return memo on 4.3.2015 (Exh.33 – duplicate). What is material to be noted is that the cheque return memo by the Dena Bank dated 4.3.2015 has not been proved on record. Though Mukund Marotrao Fulzele, the Manager of Dena Bank has been examined, he has not been called upon to produce on record the cheque return memo issued by the Dena Bank dated 4.3.2015. A perusal of his evidence at Exh.47 indicates this position. Also what is material to consider is that Exh.33, the cheque return memo issued by the State Bank of India has been marked as an Exhibit in the evidence of the complainant. No witness from the State Bank of India has been summoned to prove the contents of Exh.33. That being the position, neither the cheque return memo dated 4.3.2015 issued by the Dena Bank, nor the cheque return advice issued by the State Bank of India dated 4.3.2015 (Exh. 33) has been proved as per the requirement of law, considering which I do not see any reason to interfere in the judgment dated 27.11.2013 passed by the learned Magistrate acquitting the accused. The appeal is without merit and is accordingly dismissed. No costs.

JUDGE

Rvjalit