IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 192 OF 2014

Mr Vasant Janki Rana
Age: 52 Years, Occu.:- Service
Opp. Shine Mandir, Near Nirmal Nagar
Khar (E), Mumbai – 400 051
presently residing at
C/o Sant Raj Rajbhar
The Great Indira Nagar
Behind Hanuman Mandir
Marol Pipeline, A. K. Road
Andheri (E), Mumbai – 400 059. … Appellant

Versus

1. Mr Gajanan Govind Deorukhkar
   AAI Colony, Block No. A 39/8,
   Age:- Adult, Occu.:- Service
   Opp. P & T Colony, Coal Building,
   Sahar Road, Andheri (E)
   (Original Accused)

2. State of Maharashtra … Respondents

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Ms Anjali Singh for the Appellant.
Ms Lalita Kamat for Respondent No.1.
Mr A. R. Kapadnis, APP for Respondent No.2-State.

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CORAM : R. N. LADDHA, J.

RESERVED ON : 16 OCTOBER 2023
PRONOUNCED ON : 12 DECEMBER 2023

Judgment :

The legality, propriety and correctness of the judgment and order dated 1 October 2012 passed by the learned Metropolitan Magistrate, 44th Court, Andheri, Mumbai, in Criminal Case No. 4051/SS/2007, whereby accused/respondent No.1 (hereinafter referred to as 'the accused') came to be acquitted of the offence punishable under Section 138 of the Negotiable Instruments Act, 1981 (for short, 'N.I. Act'), is assailed in this appeal.

2. It is the case of the complainant/appellant (hereinafter referred to as 'the complainant') that the accused approached him in January 2007 for a friendly loan of Rs.1,65,000/-with assurance to repay the same within a short period, and thereafter, on his persistent demand, accused issued a cheque bearing No. 453873 dated 28 August 2007 drawn on Canara Bank, Ville Parle (E) Branch, Mumbai, for Rs.1,65,000/- (for short, 'the said cheque'). This cheque was dishonoured with the remark 'payment stopped by the drawer' upon presentation. Despite demand through the statutory notice by the complainant, the accused failed to make payment, and ultimately, the complaint in question was filed before the learned trial Court.

3. The learned Magistrate took cognizance of the offence and

summoned the accused. On the appearance of the accused, the particulars of the offence were read over and explained to him. The plea of the accused was recorded. The accused abjured the guilt and claimed trial.

4. During the course of the trial, the learned Magistrate recorded the evidence of Vasant Janki Rana (PW1), the complainant, who deposed that in January 2007, the accused approached him to lend/advance him friendly loan amount of Rs.1,65,000/- with an assurance to repay the same within a short period, and thereafter, on his persistent demand and approaches, the accused issued the disputed cheque in his favour, which was subsequently dishonoured.

5. After concluding the recording of evidence led by the complainant, the statement of the accused under Section 313 of the Code of Criminal Procedure, 1973 (for short, 'Cr. P.C.') was recorded by the trial Court, wherein the accused pleaded innocence and false implication.

6. The accused, in his defence, examined himself wherein he stated that prior to 8 to 10 years since he was in need of money, he approached staff member one Mr Chury, who informed him that the complainant used to give loans on interest as against the

cheque. Therefore, he handed over a blank cheque to Mr Chury. Still, Mr Chury did not arrange the loan, nor did the complainant give him any money. He denied any liability to pay thereunder. He also examined Arvind Namdeo Pawar, Branch in-charge Canara Bank, Sahar Cargo Branch, Mumbai, wherein he stated that by a letter (Exhibit 31), the accused had requested to stop all payments of cheque till his permission. He admitted that the signature on the specimen card and the disputed cheque was of the accused.

7. I have heard Ms Anjali Singh, the learned counsel appearing on behalf of the appellant; Ms Lalita Kamat, the learned counsel appearing on behalf of respondent No.1; and Mr A. R. Kapadnis, the learned Additional Public Prosecutor for respondent No.2-State and perused the impugned judgment, grounds in appeal memo, evidence and material on record.

8. After examining the evidence and the material placed on record, it is revealed that the complainant did not explicitly mention in the complaint or the evidence that he paid Rs.1,65,000/- to the accused. The complainant stated that in January 2007, the accused approached him to lend/advance him a friendly loan amount of Rs.1,65,000/- with an assurance to

repay the same within a short period. Subsequently, on his persistent demand and approach, the accused issued the disputed cheque in his favour. However, the complaint or the evidence of the complainant does not state that the complainant actually gave or advanced Rs.1,65,000/- to the accused. Additionally, the mode of payment of the loan amount was neither mentioned in the complaint nor stated in the evidence of the complainant. In view of this, it cannot be concluded that the disputed cheque was issued to discharge a legally enforceable debt.

9. Resultantly, this appeal fails and is hereby dismissed.

R. N. LADDHA, J.