IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.851 OF 2006

Shri Digambar Dhaku Bandal.
An Indian Inhabitant, age 45 years,
residing at, Room No.50-C,
Kamgar Shiv Sadan Co-operative
Housing Society, 1st floor, Curry
Road, (East), Mumbai 400 012.
(since deceased)
Smt. Chhya Digamber Bandal
Residing at Anandvhal, Taluka-Malvan
Dist.Sindhudurg ..... Appellant
(Ori. complainant)

Vs.

1. Mr Ajit Gajanan Mahakal
An Indian Inhabitant, residing
At, 17/4, Sant Maharaj Marg, Kitte
Bhandari Hall, 2nd Kumbharwada,
Mumbai-400 004.

2. State of Maharashtra
through Government Pleader,
High Court, Bombay. .... Respondents.

Ms Ilsa Shaikh, appointed advocate for the appellant.
Mr Tanmay Vispute for respondent No.1.
Ms MR Tidke, APP for the State/respondent no.2.

Coram: R.N.Laddha, J.
Reserved on : 8 September 2023.
Pronounced on:28 November 2023.

Judgment:

Heard learned Counsel for the parties.

2. The legality, propriety and correctness of the Judgment and Order dated 24.02.2006 passed by the learned Metropolitan Magistrate, 20th Court, Mazgaon, Mumbai, in CC Nos.603/SS/2005 and 604/SS/20005, whereby the accused/respondent No.1 came to be acquitted of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the NI Act'), is assailed in this Appeal.

3. It is the case of the complainant that the accused signed a Memorandum of Understanding (MOU), during the pendency of the Criminal Appeal No.207 of 2000, in an amicable settlement outside the Court. As per the MOU, the accused agreed to pay Rs.7,50,000/-. Accordingly, the accused paid Rs.2,00,000/- and issued a cheque bearing No.591960 dated 11.8.2004 for the balance amount of Rs.5,50,000/-, drawn on Bank of Maharashtra, Tardeo Branch, Mumbai.

4. In Case No.604/SS/2005, the complainant claims that since the accused could not pay the amount of Rs.5,50,000/- within the stipulated period, he issued a post-dated cheque bearing No.591957 dated 14.6.2004 for Rs.3,30,000/- as interest on

delayed payment.

5. The signatures on both the cheques are not disputed. The complainant has filed the Memorandum of Understanding (MOU) dated 29.10.2003, which was executed between him and the accused. The Sessions Court, Mumbai, decided a Criminal Appeal bearing No.207 of 2000 on 16.10.2004. Upon reviewing the MOU, it is evident that the complainant agreed to compound/settle the dispute with the accused and undertook to inform the Sessions Court that he had no interest in pursuing the case against the accused. The complainant also undertook to make the necessary application to compound the offence and settle the criminal appeal. Therefore, according to the complainant, it is clear that the cheque for Rs.5,50,000/- was issued in consideration of the settlement/compounding of the appeal, which was pending at the time of execution of the MOU.

6. The complainant claimed that the cheque of Rs.3,30,000/- was issued for interest on delayed payment. However, the record shows that the cheque of Rs.5,50,000/- was dated 11.8.2004, while the cheque of Rs.3,30,000/- was dated 14.6.2004. The trial Court observed that it is highly improbable that the accused had issued the cheque for Rs.3,30,000/- before the cheque of Rs.5,50,000/- became payable. The delay in payment, if any, could only occur

after the dishonour of the cheque of Rs.5,50,000/- and not before 11.8.2004. Therefore, the issuance of the cheque of Rs.3,30,000/- by way of interest is not believable. It is evident from the records that this cheque was not issued under the MOU. Hence, the complainant's contention that the cheque was issued as interest on delayed payment cannot be accepted.

7. As far as the cheque of Rs.5,50,000/- is concerned, the same is issued under MOU with the expectation that the complainant would compound the offence and settle the case, i.e. Criminal Appeal No.207 of 2000. However, this Criminal Appeal was decided after the execution of the MOU. During the cross-examination, the complainant admitted that he had not filed any application for compounding of offence or any settlement before the Sessions Court as per MOU. After examining the judgment in Criminal Appeal No.207 of 2000, it is evident that it was not based on the settlement/compounding application filed by the complainant as agreed in the MOU. Despite the complainant's agreement to withdraw the case in the MOU, the judgment indicates that the complainant had actually contested the appeal strongly. These circumstances directly contradict the complainant's agreement under the MOU. As a result, it cannot be concluded that the complainant is entitled to the cheque amount of Rs.5,50,000/- under the MOU.

8. The presumption under Section 139 of the NI Act is rebuttable. The Section states that the accused is presumed guilty until and unless he proves his innocence. However, this presumption is rebuttable and can be contested by the accused if he raises a plausible defence that creates doubts about the existence of a legally enforceable debt or liability. To create such doubt, the accused can rely on the materials submitted by the complainant in order to raise such a defence. It is conceivable that in some cases, the accused may not lead to adduce evidence of their own. This legal position was highlighted in ***Rangappa Vs. Sri Mohan***[1]**.**

9. In such circumstances, in the considered opinion of this Court, the trial Court has rightly acquitted the accused for the offence punishable under Section 138 of the NI Act in both cases.

10. As a result, this appeal fails and is hereby dismissed.

[R.N. Laddha, J.]

1 (2010) 11 SCC 441.