**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**BENCH AT AURANGABAD**

**CRIMINAL APPEAL NO. 241 OF 2018**

Chandrala Motors a partnership firm .. Appellant
Through its partner
Girish Govind Shahapurkar
Age. 49 years, Occ. Business,
R/o. Plot No.288, N-1, Cidco,
Aurangabad.

Versus

Ayyub Kasam Shaikh .. Respondent
Age. Major, Occ. Business,
R/o. A/p. Shingi, Tq. Gangapur,
Aurangabad.

Mr.Uday V. Khonde, Advocate for the appellant.
Mr.Yogesh R. Shinde h/f. Mr. Rahul R. Karpe, Advocate for the respondent.

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| **CORAM** | : | **ABHAY S. WAGHWASE, J.** |
| **RESERVED ON** | : | **16.01.2024** |
| **PRONOUNCED ON** | : | **01.02.2024** |

**J U D G M E N T :-**

01. Feeling aggrieved by the judgment and order passed by the learned Judicial Magistrate, First Class, (Court No.12) Aurangabad, in S.C.C. No.8269 of 2013 dated 18.09.2017, the original complainant has preferred the instant appeal questioning the legality and maintainability of the said judgment and order.

02. Present appellant instituted a proceeding under the provisions of the Negotiable Instruments Act against present respondent on the premise that the complainant is a partnership firm and authorized sales and service dealer of earthmoving machines/equipments. The respondent approached them for purchase of backhoe loader. He borrowed loan of Rs.16,00,000/- from Shriram Transport Finance Company by mortgaging his land. According to the complainant, total price of the loader is Rs.20,50,169/-. The amount of Rs.24,500/- was to be paid by the customer towards insurance policy and as such total amount of backhoe loader was Rs.20,74,669/-. Considering the loan amount and cash amount of Rs.2,24,500/- paid by way of cash by the accused, the amount due towards accused/respondent was Rs. 2,50,000/-. The said liability was to be completed. The machinery was already delivered and accepted by the respondent of which there is no dispute. Towards repayment of Rs.2,50,000/- initially two cheques were issued, but same were dishonoured and therefore third cheque of amount of Rs.2,50,000/- was issued. However, when it was presented with the bank, it returned dishonoured and therefore after putting the accused/respondent to notice, S.C.C. bearing No.8269 of 2013 was instituted by the complainant. In the

above complaint after issuance of process, the respondent/accused appeared and resisted the complaint and denied the entire case set up by the complainant. Both the parties adduced oral and documentary evidence.

After appreciating the same, the learned JMFC reached to a conclusion that the complainant failed to prove that there was legally enforceable debt. Moreover, the learned Trial Judge held that the accused rebutted presumption available under the Negotiable Instruments Act and thereby vide above judgment dated 18.09.2017, acquitted the accused. Precisely said judgment is assailed by filing the instant appeal.

03. Heard both the sides at length. After considering the submissions advanced, it appears that the judgment of the learned Trial Court is questioned **firstly** on the ground of failure to appreciate oral and documentary evidence; **secondly** the learned Trial Court erred in holding that there was no legally enforceable debt; **thirdly** the cheques and signature were undisputed and therefore the case ought to have been accepted and **fourthly** the learned Trial Court failed to consider and appreciate the undertakings given by the accused.

For all above reasons, the judgment is sought to be quashed and set aside.

04. In answer to above, the learned Counsel for the accused/respondent submits that there is no dispute that machinery/vehicle was purchased by raising loan as well as contributing his own share and that the due amount was already paid. However, excess amount was demanded by the complainant, even when there was nothing remaining at the end of the accused and there was no legally enforceable debt. The learned Counsel invited attention of this Court to the depositions of PW-1 as well as PW-2 and would submit that there is clear admission about receipt of amount and issuance of acknowledgment towards the same. Therefore, there was no legally enforceable debt and therefore there was no question of issuing any cheque. That, learned Trial Court has correctly appreciated the evidence adduced by the complainant. That, a false case is apparently set up and excess amount was tried to be extracted. That, on the contrary, the accused has rebutted the presumption available under sections 118 and 139 of the Negotiable Instruments Act. The learned Trial Court has committed no error

in acquitting the accused and he prays for dismissing the appeal for want of merit.

05. On re-appreciation of evidence, here, there is no dispute that the complainant is a partnership firm. Further, there is no dispute about the transaction of purchase of backhoe loader from the complainant, who is an authorized sales and service dealer. Evidence of complainant shows that loan was raised from Shriram Transport Finance Company to the tune of Rs.16,00,00/- and therefore, margin money turns out to be 4,50,169/-. The complainant does not disown Exh.19, which is a delivery order issued by the said financier, reflecting price of the machinery as Rs.20,50,169/- only. The complainant in cross has admitted receipt of Rs.4,50,000/- on 23.01.2010 and of Rs.169/- on 27.12.2011. Accused came with a case that he had paid Rs.2,24,665/- towards the remaining dues regarding which there does not seem to be dispute at the end of complainant. Therefore, if accused has paid above amount, then the balance should be Rs.2,25,504/- and not the amount claimed by complainant to the tune of Rs.2,50,000/-. In fact, amount of Rs.24,496/- apparently appears to be excess than what is liable.

It is settled law that only legally enforceable debts are required to be demanded and paid. There is no explanation from the complainant in his evidence as to how amount of Rs.2,50,000/- which is reflected on the instrument was remaining to be paid by accused.

06. In the light of above discussion and on re-appreciation, it is emerging that complainant failed to establish that the amount reflected on the cheque was the legally enforceable debt and that it had remained unpaid. Apparently for excess amount, for which there is no clarification, instrument seems to have been drawn even when there was no legally enforceable debt. Hence, though initial presumption on the strength of transaction and cheque can be drawn, unless legally enforceable liability is established, offence cannot be said to be squarely brought home. When there is apparently a mismatch between liability by way of dues, and the amount reflected on the cheque in question, case cannot be said to be established by complainant.

07. Having gone through the judgment under challenge, there seems to be correct appreciation. The findings and conclusion being in consonance with the evidence on record, judgment cannot be said to be perverse, illegal or

not maintainable. No case being made out on merits in appeal, I proceed to pass the following order:

**<u>O R D E R</u>**

(i) The criminal appeal is dismissed.

**[ABHAY S. WAGHWASE, J.]**

snk/2024/JAN24/crap241.18