



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 285 OF 2018

Vardhman Gramin Bigarsheti
Sahakari Patsanstha Limited,
Vakadi, through -
Jagannath s/o Baburao Sabale,
Age – 35 years, Occu. Service,
R/o. Loni (Bk), Balasaheb Nagar,
Tq. Rahata, District Ahmednagar.

... Applicant

Versus

Sudhir s/o Sanjay Pawar,
Age – 39 years, Occu. Business,
R/o Nimbhari, Tq. Newasa,
Dist. Ahmednagar.

... Respondent
[Orig. Accused]

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Mr. Chandrakant K. Shinde, Advocate for the Appellant.
Mr. A. D. Shinde, Advocate for the Respondent.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 23.02.2024

Pronounced on : 28.02.2024

JUDGMENT :

1. Original complainant, who had instituted proceedings under Section 138 of the Negotiable Instruments Act, 1881 [NI Act] is hereby assailing the judgment and order of learned JMFC dated 14.03.2017 acquitting the present respondent from offence under Section 138 of the NI Act.

2. Learned counsel for the appellant appraised this court about relations between complainant-appellant and respondent-original accused regarding complainant to be a registered cooperative society involved in the business of lending loans and present respondent-accused to be its borrower. It is pointed out that vehicle loan was obtained by respondent to the tune of Rs.3,27,595/- and on date of complaint, amount of Rs.2,23,108/- was due towards accused. That, accused issued cheque for the said amount dated 10.02.2014, but it was dishonoured and therefore statutory notice was issued. However, in spite of its receipt, when there was no repayment of cheque amount, proceedings under Section 138 of the NI Act were instituted.

3. It is pointed out that all necessary ingredients for attracting Section 138 of the NI Act were available on record. Authorized person on behalf of complainant had adduced evidence at Exhibit 18. Documentary evidence of amount due was quoted in the complaint. The cheque in question which was dishonoured, was also placed along with bank memo and copy of notice. Evidence of witness on behalf of complainant had remained intact. There was strong presumption as neither issuance of cheque nor signature over it was questioned or denied and therefore, full proof case was made out.

He further pointed out that learned trial court still acquitted the accused by holding that there is mismatch between amount due and cheque amount and consequently it has been held by trial court that account extract reflecting dues was not placed on record. Simplicitor on such grounds, acquittal has been granted.

For all above reasons, learned counsel for the appellant prays to set aside the impugned judgment passed by learned JMFC by allowing the appeal.

Learned counsel seeks reliance on the ruling of the Hon'ble Apex Court in the case of ***Bir Singh v. Mukesh Kumar*** (2019) 4 SCC 197.

4. In answer to above, learned counsel for the accused would submit that amount due and legally enforceable debt was not proved by complainant. It was essential for attracting the offence. He took this Court through the findings of learned trial court in para 17 and 18 and would submit that there is correct appreciation of evidence. As complainant failed to demonstrate that the cheque amount was due and legally enforceable on that date, learned trial court has correctly dismissed the complaint and hence he prays to dismiss the appeal also for want of merits.

5. After considering submissions of both sides, it seems that complainant is a registered co-operative society involved in the business of seeking deposits and extending loans. Complaint was lodged on the premise that accused had taken vehicle loan to the tune of Rs.3,27,597/- and amount of Rs.2,23,108/- was outstanding from accused i.e. towards principal as well as interest. Therefore, on demand, cheque was allegedly issued by accused but it was dishonoured. The cheque in question, bank memo, legal notice are all placed on record.

6. Fundamental defence raised in the trial court by present respondent is that amount which is claimed to be outstanding is incorrect and it is contrary to the record of the complainant itself.

7. Therefore, here, there is no dispute about loan transaction. Primary objection raised is regarding amount reflected on the cheque to be not outstanding, i.e. in other words, there was no legally enforceable debt of the amount which is appearing on the cheque in question Exhibit 28. Exhibit 27 seems to be the account extract. But the amount quoted in complaint and the one in the said extract Exhibit 27 are distinct. Learned counsel for the complainant pointed

out that though there is mismatch, the society has right to claim expenses incurred towards legal expenses and other penalties. However, he further fairly conceded, on court query, that such legal expenses or penalty charges were not brought to the notice of respondent accused by way of legal notice i.e. statutory notice. Therefore, when apparently Exhibits 27 and 28 are contrary to the amount reflected in the complaint, there is apparently a mismatch between the quantum.

8. It is settled law that complainant has to establish that the amount reflected on the cheque is legal dues and enforceable. Once there is variance in the cheque amount and when complainant failed to demonstrate that it was the amount due on the date of cheque, case of complainant becomes weak.

9. On going through the judgment under challenge, it is specifically found that in para 13 to 18, there is detail discussion by learned trial Judge. Learned trial Judge has reached at correct finding that the amount of Rs.2,23,108/-, which is shown to be outstanding and is also reflected on the cheque dated 10.02.2014, is not supported by Exhibit 27 or any other extract which, complainant being a financial institution, is expected to maintain. Resultantly,

when legally enforceable debt is not proved, no fault can be found in the judgment of learned trial court refusing to accept the case of complainant and acquitting the accused. Hence, no case being made out on merits, appellant fails. Accordingly, I proceed to pass the following order :

ORDER

The appeal is hereby dismissed.

[ABHAY S. WAGHWASE, J.]

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