IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 301 OF 2023

Nikhil s/o Nandkumar Joshi
Age : 38 years, Occu. : Business,
R/o. Flat No. 204, Platinam Plaza,
Tapovan Road, Ahmednagar,
Tq. and Dist. Ahmednagar. … Appellant
[Orig. Complainant]

Versus

Rameshwar s/o Vitthal Solat
Age : 37 years, Occu: Business,
R/o. Dhangarwadi, Post. Jeur (Ba),
Tq. and Dist. Ahmednagar. … Respondent
[Orig. Accused]

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Mr. Arvind G. Ambetkar, Advocate for the Appellant.
Ms. M. V. Narwade h/f Mr. V. P. Narwade for the Respondent.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 14.03.2024
Pronounced on : 22.03.2024

JUDGMENT :

1. The judgment and order of acquittal passed by learned Additional Chief Judicial Magistrate, Court No. 15, Ahmednagar, acquitting present respondent from offence under Section 138 of the Negotiable Instruments Act, 1881 [NI Act], while deciding Summary Criminal Case No. 4484 of 2019 is taken exception to by the original complainant.

2. S.T.C. No. 4484 of 2019 was instituted by present appellant Nikhil alleging that out of friendly relation between him and accused, hand loan to the tune of Rs.1,50,000/- was demanded. However, complainant could arrange only Rs.1,03,000/- and handed it to the accused. Only after persistent demand, accused issued cheque dated 17.05.2019 to the tune of Rs.1,00,000/-. On its presentation, the cheque was returned dishonoured. Therefore, legal notice was dispatched, however, in spite of receiving it, when accused failed to pay the cheque amount, complaint was instituted.

3. In support of his case, complainant adduced his own evidence and placed the cheque in question on record along with bank memo, notice and its receipt as well as a promissory note.

4. Defence in the trial court taken by accused is that alleged transaction was of 2017, whereas complaint is filed in 2019; mediator Balasaheb Popalghat has not been examined; previous blank cheques are being misused. He has not denied signature over alleged promissory note.

5. After appreciating respective cases advanced by both the parties, learned trial court held that complainant failed to make out case under Section 138 of the NI Act and thereby acquitted the accused.

6. Precisely above judgment is taken exception to by filling instant appeal.

SUBMISSIONS

7. Learned counsel for the appellant/complainant would point out that there is no denial of hand loan. Similarly, there is no denial of issuance of cheque and signature over it and even the promissory note and receipt of Exhibit 18. That, accused has not probabilized his defence. That, by what mode hand loan was given is already made clear in the evidence. Learned trial court has not correctly appreciated the evidence. Even legal preposition has not been correctly appreciated and therefore, it is prayed that appeal be allowed by setting aside the impugned judgment.

8. Learned counsel for the respondent would submit that accused miserably failed to establish the essential ingredients of Section 138

of NI Act. There is no cogent and reliable evidence about alleged transaction of handing over hand loan. Moreover, the cheque is of 2017, but it is put to use in 2019 and therefore, expired cheque has been put to use and therefore learned trial court correctly dismissed the complaint.

9. Undisputed facts which are emerging are, friendly relation and execution of promissory note dated 13.10.2017. Specific contention of complainant is that there was demand of Rs.1,50,000/- but he arranged Rs.1,03,000/- and gave it to accused.

10. It is settled law that for establishing offence under Section 138 of NI Act it has to be shown that all necessary ingredients are available in the evidence. Most fundamentally, legally enforceable debt has to be demonstrated and firmly established. Keeping such essential ingredients in mind, if evidence of complainant is put to scrutiny, it is conspicuously emerging that complainant has merely averred about giving Rs.1,03,000/-, but in what form such payment was made is not clarified either in the complaint or in the witness box. Moreover, promissory note reflects details of the cheque in question fortifying the case of defence about handing over three blank cheques. There is no clear evidence that there was legally enforceable

debt towards accused at the time of lodging instant complaint i.e. in the year 2019. Moreover, it seems that accused has placed on record his own account extract which shows that time and again complainant has withdrawn amounts from his account. Complainant in his cross has candidly admitted about obtaining three blank cheques at the time of execution of promissory note dated 13.10.2017. Therefore, defence of accused about handing over blank cheques at the time of issuing promissory note and the possibility of blank cheques being misused, has force and substance.

Resultantly, when complainant failed to establish legally enforceable debt and when there is no cogent and reliable evidence in support of extending hand loan, case put up by complainant cannot be straightway accepted. Consequently, though there is cheque signed by accused, it is not shown to be towards repayment of hand loan allegedly obtained in October 2017.

11. Perused the judgment. Learned trial court has correctly appreciated the evidence as well as law. No fault can be found in the appreciation so as to interfere. Appeal being devoid of merits, following order is passed.

ORDER

The appeal is dismissed.

[ABHAY S. WAGHWASE, J.]

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