IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 683 OF 2002

The Maharashtra Agro Industries Development Corporation Limited (Govt. of Maharashtra Undertaking) Under the Provisions of Companies Act, 1955, having their registered office at Rajan House, IIIrd Floor, Prabhadevi, Mumbai 25, having their Regional Office at Shakti Sahakar Building, Aurangabad. … Appellant
[Orig. Complainant]

Versus

1. Kakde Krishi Seva Kendra, through: its proprietor Shri Subhash s/o. Sahebrao Kakade Age : 30 years, Occ. Business, R/o. Kasari, P.S. Dharur, Taluka Dharur, District Beed. [Orig. Accused]

2. State of Maharashtra … Respondents

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Mr. S. R. Deshpande, Advocate for the Appellant.
Mr. S. P. Katneshwarkar, Advocate for Respondent No.1.
Mr. N. D. Batule, APP for Respondent No.2-State.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 22.02.2024
Pronounced on : 28.02.2024

JUDGMENT :

1. Original complainant, who instituted proceedings under Section 138 of the Negotiable Instruments Act, 1881 [NI Act] against present

respondent, is taking exception to the judgment and order of acquittal dated 07.03.2001 passed by learned Chief Judicial Magistrate, Aurangabad in SCC No. 611 of 1995 by which complaint came to be dismissed and respondent came to be acquitted.

2. SCC No. 611 of 1995 was instituted by complainant, a Government of Maharashtra undertaking which is involved in the business of supplying agro products, fertilizers, pesticides etc. Accused, a proprietor of Krishi Seva Kendra, purchased fertilizers and pesticides after issuing bank guarantee. He had purchased goods worth Rs.14,75,669/-. In September 1999, complainant invoked the bank guarantee. Thereafter accused issued three cheques Exhibits 29, 30 and 31, but on its presentation, same were dishonoured and returned by the bank with remark “refer to drawer” and therefore, statutory notice was dispatched by complainant on 13.10.1995. However, said notice was returned with remark as “shop closed” and therefore, complaint was instituted under Section 138 of the NI Act.

3. On process being issued, accused appeared but took a stand that almost ten blank cheques were handed over to the complainant and there was a specific condition put that unless prior intimation is given to the drawer-accused, complainant should not present cheques

for realization. In spite of such intimation, complainant presented the cheques and got the same dishonoured and therefore he questions the sustainability and maintainability of the complaint.

4. In view of above respective stands of each side, learned trial Judge appreciated the oral and documentary evidence and reached to a finding that offence under Section 138 of the NI Act has not been made out and accused is entitled for acquittal and so, by judgment dated 07.03.2001, dismissed the complaint and acquitted the accused.

Feeling aggrieved by the above judgment and order of acquittal, complainant has preferred instant appeal on various grounds spelt out in the appeal memo.

SUBMISSIONS

5. On behalf of the appellant complainant, it is submitted that there is no dispute about complainant to be supplier of fertilizers, agro products and pesticides and accused to be involved in business of sale of agricultural products. There is no denial about furnishing bank guarantee and even outstanding amount of Rs.14,75,669/-. Three cheques were issued and neither issuance of cheques nor signature over it are denied by accused. It is pointed out that however, on its

presentation, the cheques were returned dishonoured and therefore statutory notice was dispatched. In spite of it, accused failed to repay the cheque amount and therefore proceedings were instituted. He pointed out that even civil litigation was instituted wherein decree has been passed. Therefore, legally enforceable debt has not been denied. He pointed out that in the light of above, presumption under Sections 118 and 139 of the NI Act was squarely attracted as there is no denial of liability, issuance of cheque or signature over it. Simplicitor defence of not giving intimation prior to presentation of cheque is taken and there is no such legal requirement in law. Original record and challans were already filed in the suit and there is no denial of the same. Therefore, there was legally enforceable debt and it was duly proved. But still learned trial court has dismissed the complaint on above ground of failure to give prior intimation. Learned counsel seeks reliance on the ***K. N. Beena v. Muniyappan and another*** AIR 2001 SC 2895 and ***Hiten P. Dalal v. Bratindranath Banerjee*** AIR 2001 SC 3897(1).

6. In answer to above, learned counsel for the respondent is supporting the judgment and order of acquittal, taking up a specific stand that accused had handed over ten blank cheques to the appellant, including the three cheques in question, with specific

condition to inform accused at least 8 days in advance i.e. before presentation of the cheques. That, no such intimation was given. That, even by communication dated 10.05.1994, all cheques were demanded back but the same were not returned. Learned counsel invited attention of this court to the communication dated 19.04.1993 which is at Exhibit 88, requiring prior intimation. He also invited attention of the court to the cross of PW1, PW2 and PW3 and his own witness DW1. He also denied receipt of notice dated 13.10.1995. He also pointed out that complainant has not placed on record true statement of accounts. There is no iota of evidence, either oral or documentary, showing outstanding amount as claimed by complainant.

Consequently, he submitted that complainant has failed to establish necessary ingredients as well as receipt of notice and there being no intimation in whatsoever form regarding presentation of cheques in spite of specific communication to that extent, clandestinely cheques were presented and got dishonoured. Therefore, according to him, learned trial court has committed no error whatsoever in acquitting the accused. He seeks reliance on the ruling of ***M.S. Narayana Menon alias Mani v. State of Kerala and another*** (2006) 6 SCC 39.

7. Perused the record. Following witnesses seem to have been examined in the trial court .

PW1 Dilip Patil was the Regional Manager in Maharashtra Agro Industries Development Corporation. He deposed about accused to be running Krishi Seva Kendra, about accused to be their dealer and furnishing bank guarantee before starting dealership. He also deposed that accused used to purchase fertilizers and pesticides by cash payment. It is also deposed that amount of Rs.9,40,679/- was outstanding towards accused. However, Bank guarantee was only to the tune of Rs.5,00,000/-. Therefore, accused issued three cheques on 25.09.1995, however, on its presentation, intimation was received about its dishonour and therefore, after legal notice when payment was not received, complaint was instituted.

PW2 is the Branch Manager Ashok Dhokar and he has deposed about receipt of cheques Exhibit 29 to 31 but the same to be dishonoured due to insufficient funds. He identified memo Exhibit 72.

PW3 Ramdas Niranjan is the Manager of complainant company and he also deposed about accused to be their distributor, an amount of Rs.9,40,669/- outstanding by way of arrears, about he issuing cheques, the same getting dishonoured and therefore issuing notice Exhibits 35 and 36 but accused failing to pay the cheque amount.

8. Defence has also adduced evidence of one Prakash Rathod, who in his evidence stated that he was working as Senior Sales Representative in Aurangabad from 20.12.1989 to July 1996. He deposed about office copy of letter dated 19.04.1993 addressed to the Regional Manager of complainant. He identified his signature over it and therefore it was marked at Exhibit 88. He deposed that accused had given ten cheques along with letter Exhibit 88 and therefore he had send ten cheques to regional office vide letter dated 19.04.1993. He also identified the communication dated 10.05.1994 at Exhibit 89 and his signature over it, as well as communication dated 19.05.2000 Exhibit 90 and signature of one Lakhkar.

9. Here, admitted facts are about complainant to be a Government of Maharashtra undertaking involved in the business of supply of agro based products, insecticides, fertilizers etc. It is further admitted that accused was appointed as a dealer on furnishing bank guarantee. Complainant came with a case of outstanding of Rs.9,40,679/- and towards said debt, accused issued three cheques Exhibits 29 to 31.

10. Specific defence of accused is that he had issued ten blank cheques in the custody of complainant, however, a specific condition was stipulated calling upon complainant to present the cheques only on prior eight days intimation. However, without any intimation, complainant party had presented the cheque and therefore he is not liable.

11. In support of above defence learned counsel for accused invited attention of this court to Exhibit 37 which is a communication dated 17.10.1995. Statutory notice seems to have been dispatched by complainant on 13.10.1995. Resultantly, after receipt of statutory notice, there is a clear communication by way of reply on 17.10.1995 [Exhibit 37] to the complainant from accused conveying that no prior intimation of presentation of cheques was issued by complainant. Therefore, here, there is documentary evidence from accused side taking objection to presentation of cheques without prior intimation. It may happen that for some reason, drawer may seek such prior intimation so as to make necessary arrangements for availability of funds to meet the cheque amount. Here, precisely this seems to have happened. When there is no denial of communication Exhibit 37, it was expected of complainant to intimate at least 8 days prior, that they are about to present the cheque.

12. Learned counsel for the accused invited attention of this court to the findings and judgment of learned trial court wherein Sections 46 and 47 of the NI Act have been dealt and discussed. On going through the same and on going through the provisions, it is emerging that Sections 46 and 47 run as under:

> "**46. Delivery.**—The making, acceptance or indorsement of a promissory note, bill of exchange or cheque is completed by delivery, actual or constructive.
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> As between parties standing in immediate relation, delivery to be effectual must be made by the party making, accepting or indorsing the instrument, or by a person authorized by him in that behalf.
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> As between such parties and any holder of the instrument other than a holder in due course, **it may be shown that the instrument was delivered conditionally or for a special purpose only**, and not for the purpose of transferring absolutely the property therein.
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> A promissory note, bill of exchange or cheque payable to bearer is negotiable by the delivery thereof.
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> A promissory note, bill of exchange or cheque payable to order is negotiable by the holder by indorsement and delivery thereof.
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> **47. Negotiation by delivery.**—Subject to the provisions of section 58, a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof.

> Exception.—A promissory note, bill of exchange or cheque delivered on condition that it is not to take effect except in a certain event is not negotiable (except in the hands of a holder for value without notice of the condition) unless such event happens."

13. In the light of above explanation, when there is a condition which is to be fulfilled prior to the presentation, the holder i.e. the complainant herein was expected to give intimation in view of the communication Exhibit 88, that complainant should inform accused about intentions of complainant to present the cheque for realization. Therefore apparently, here, complainant has not given any intimation prior to presentation of cheque and hence complainant ought not to have presented the cheque.

Consequently, under such circumstances, though cheques and signatures over it are sufficient to draw presumption under Sections 118 and 139 of the NI Act, condition precedent having not been complied, liability, in fact, do not arose on accused to make necessary arrangements. For all above reasons, no fault can be found in the findings and conclusion reached at by learned trial Judge. No case being made out on merits, I proceed to pass the following order:

ORDER

The appeal is dismissed.

[ABHAY S. WAGHWASE, J.]

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