2024:BHC-AUG:7526

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 212 OF 2004

Dr. Gopalrao Eknathrao Jagtap
Age: 57 years, Occ: Business,
R/o 75, Jankinagar, Jalgaon,
Taluka and District Jalgaon. … Appellant
[Orig. Complainant]

Versus

1. Ramdas s/o Vithal Patil,
Age : 37 years, Occ: Business
& Agriculture, R/o Patonda,
Taluka Chalisgaon, District Jalgaon.

2. The State of Maharashtra … Respondents

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Mr. M. K. Deshpande, Advocate for the Appellant.
Mr. Paresh B. Patil (Borse), Advocate for Respondent No.1.
Mr. D. J. Patil, APP for Respondent No.2-State.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 04.04.2024
Pronounced on : 10.04.2024

JUDGMENT :

1. Instant appeal arises out of the judgment and order dated 05.03.1999 passed by learned J.M.F.C., Jalgaon in S.C.C. No. 2898 of 1995, thereby acquitting present respondent from offence punishable under Section 138 of the Negotiable Instruments Act, 1881 [NI Act].

2. Present appellant filed proceedings under Section 138 of the NI Act contending that he is agent of Godrej company and is involved in selling cattle fodder. Accused is in the business of supplying milk and as such, both are acquainted. According to complainant, on oral request of accused, hand loan of Rs.30,000/- was extended. In spite of assurance to repay, accused did not repay. On persuasion, accused handed over cash of Rs.1,000/- and issued cheque to the tune of Rs.29,000/-, but on its presentation, it was dishonoured and therefore legal notice was dispatched demanding cheque amount, but on failure to pay it, above proceedings were instituted. Learned trial court, on primary satisfaction, issued process and called upon accused to answer the complaint. Learned trial court permitted to adduce evidence and on appreciating the same, held that complainant failed to prove the offence under Section 138 of the NI Act and thereby acquitted the accused. Hence instant appeal.

3. Learned counsel for the appellant would submit that acquaintance and relations have not been disputed by accused. Issuance of cheque and signature over it also is not disputed. Therefore, initial presumption was in favour of complainant. That, no defence was at all taken by accused except denial, but still learned trial court acquitted accused. Learned counsel again took this court

through the evidence of complainant and the bank officials i.e. PW2 and PW3 and would submit that offence under Section 138 of the NI Act was clearly made out. There was legally enforceable debt. But still learned trial court has failed to appreciate the evidence on record and has erred in acquitting accused. Hence, he prays to set aside the same by allowing the appeal.

4. In answer to above, learned counsel for the accused as well as learned APP for the State would submit that there was no borrowing of loan as alleged. No cheque was issued towards any legally enforceable debt. There is no evidence in support of hand loan. Therefore, according to them, learned trial court has rightly acquitted accused and hence, they pray to dismiss the appeal.

5. Heard both sides. Perused the evidence before learned trial court.

6. Evidence of complainant is at Exhibit 54 and he has adduced evidence one Kapoorchand Jain, an official of Bank of Baroda at Exhibit 62 and one Vishawas, clerk of Central Bank of India at Exhibit 63. That apart, complainant has placed on record cheque in question Exhibit 55, bank memo Exhibit 57, legal notice Exhibit 59 and reply by accused to the notice Exhibit 60.

7. Case of complainant in trial court is that accused demanded hand loan to the tune of Rs.30,000/- which was extended to him. On demand, he paid only Rs.1,000/- and for remaining amount of Rs.29,000/- he issued cheque, but on its presentation, it was returned dishonoured for want of sufficient funds. In support of above case of extension of hand loan, except his own evidence, complainant has not adduced any other distinct evidence. Though he claims that he and his son both approached accused for repayment, son is also not examined. Primarily, no promissory note or any acknowledgment of extension of hand loan has been apparently obtained by complainant.

8. Accused has outright denied hand loan. Considering the nature of prosecution, burden was on the complainant to prove giving hand loan. There is no distinct or reliable evidence from complainant's side. Though complainant has adduced evidence of bank officials, except deposing about account maintained, cheques issued, these witnesses have not deposed about alleged hand loan. Rather, bank officials have not carried record. Therefore, except evidence of complainant, there is nothing to demonstrate borrowing of hand loan.

9. Accused had disputed signature also over the cheque. Such stand having been taken, there was heavy burden on complainant to establish loan transaction and issuance of cheque in question towards repayment of the same only. This burden does not seem to have been discharged by complainant. Therefore, for want of evidence, case so set up by complainant cannot be accepted.

10. The essential ingredients of establishing legally enforceable debt itself have not been proved by complainant in the case in hand.

11. Perused the judgment under challenge. Learned trial court has correctly appreciated the oral and documentary evidence. Reasons assigned and conclusion reached are in consonance with the quality of evidence on record. Complainant having failed to establish offence under Section 138 of the NI Act, no fault can be found in the appreciation or conclusion reached at by trial court so as to interfere. Hence, no case on merit being made out, I proceed to pass the following order:

ORDER

The appeal is dismissed.

[ABHAY S. WAGHWASE, J.]

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