



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 448 OF 2004

The Godawari Sindhphana Area
Development and Welfare Trust,
Georai, Tq. Georai, Dist. Beed.
Through Namdeo s/o. Kishanrao Wakte,
Age : 43 years, Occu. : Service,
R/o. Georai, Tq. Georai, Dist. Beed.

... Appellant.
(Orig. Complainant)

Versus

Dnyanoba s/o. Suryabhan Pawar,
Age : 41 years, Occu. : Agri.
and Labour Contractor,
R/o. Dimakwadi, Tq. Georai,
Dist. Beed.

... Respondent
(Orig. Accused)

...
Mr. Ranjit D. Gaikwad h/f. Mr. D. J. Choudhari, Advocate for Appellant.
Mr. D. A. Karnik h/f. Mr. Vivek Dhage, Advocate for Respondent.
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 18th JUNE, 2024

PRONOUNCED ON : 21th JUNE, 2024

JUDGMENT :

1. Original complainant, who had instituted proceedings under section 138 of Negotiable Instruments Act (N.I. Act) against present respondent, is aggrieved by the judgment and order of acquittal passed by learned Judicial Magistrate First Class, Georai dated 11.10.2002 in S.C.C. No. 235 of 1997.

FACTUAL MATRIX

2. Complainant is a charitable trust registered under the

Maharashtra Co-operative Societies Act, 1960, involved to help the farmers and labourers for harvesting and transporting sugarcane. Respondent accused is a contractor and he entered into contract with complainant in respect of harvesting and transporting the sugarcane. Complainant extended advance amount to the respondent accused from time to time for arranging labours and transporting sugarcane. The respondent accused did not perform the work against the said advance amount. Towards repayment of such advance amount, accused issued cheque drawn on his banker, but on its representation it was dishonoured. Therefore, as required under law, legal notice was dispatched. The same was refused to be accepted, and therefore, proceedings under section 138 of N.I. Act were instituted.

SUBMISSIONS

On behalf of Appellant : -

3. Learned counsel for appellant pointed out that, complainant is a charitable trust involved in rendering help to the farmers and labourers for harvesting and transporting the sugarcane crop. It is pointed out that, present respondent accused was a contractor. That, complainant had assigned him work of arranging labours and transporting sugarcane and on his demand, advance amount was also given from time to time. After examining

account of accused in current season, amount was found to be due from the accused. Thereafter, complainant demanded the said amount. That, towards such advance amount, accused had issued cheque to the tune of Rs.2,11,112/-. That, it was legally enforceable debt. That, the said cheque was presented for realization, however, it was returned dishonoured with remark as "Funds insufficient". Hence, notice was dispatched. However, said notice was returned 'unserved', and therefore, second notice was dispatched, which was refused to be accepted. Therefore, learned counsel for appellant pointed out that, all necessary ingredients for attracting section 138 of N.I. Act, were available.

4. That, in support of its case, prosecution has adduced testimony of PW1 Namdeo Wakte, official of the complainant. That, cheque in question, bank memo, copies of legal notices along with postal acknowledgments were also placed on record. It is submitted that, thus complainant had proved the offence, however, according to him, learned trial court failed to appreciate and consider appellant's case and dismissed the complaint by acquitting the accused. According to learned counsel, findings and conclusions reached at by learned trial court are not in consonance with the evidence and also not in conformity with the settled legal position. Hence, he prays to set aside the impugned judgment by allowing the appeal.

On behalf of Respondent :

5. Per contra, learned counsel for respondent accused would point out that, complainant had miserably failed to establish necessary ingredients of section 138 of N.I. Act. Learned counsel pointed out that, at the outset, complainant failed to bring alleged original agreement between complainant and accused on record. Secondly, complainant contradicted himself in complaint as well as in his testimony. That, complainant is unable to state as to when exactly alleged advance payments were made. Therefore, essential evidence was not brought by the complainant. He pointed out that, consequently, taking the same into consideration, learned trial court elaborately dealt and discussed the evidence adduced by the prosecution and correctly held that complainant failed to make out the offence and as such committed no error in acquitting the accused. Therefore, he prays to dismiss the appeal.

ANALYSIS

6. In the light of above submissions and on re-appreciating the oral and documentary evidence, it emerges that, complaint bearing S.C.C. No. 235 of 1997 was instituted by complainant, namely, Godavari Sindhphana Area Development and Welfare Trust, Georai, which is said to be a trust registered

under the Maharashtra Co-operative Societies Act, 1960. Accused has not disputed such identity of complainant. It seems that, the case of complainant is that an advance payments was given to accused, who was said to be labour contractor. It is further case of complainant that, even agreement was executed between complainant and accused for supply of labours and transporting sugarcane. However, as pointed out by learned counsel for respondent, complainant has not placed on record original agreement allegedly entered into between the parties. Learned counsel for appellant conceded that original agreement is not brought on record. Therefore, the very document regarding privity of contract between complainant and accused is not brought on record by complainant to substantiate the foundation of his case. Secondly, on close scrutiny of complaint, it is conspicuously emerging that, complainant has averred that, advance payments were made from time to time. When such advance payments were made and of what amount, has not been clarified in the complaint or even in the witness box. General allegations are made about advance payments. When the complainant was a registered trust and was under the supervision and control of registration authorities, all financial aspects are expected to be maintained for proper audit. However, as stated above, when advance payments were made to complainant, at

which place and of what amount, is not reflected either in the complaint or in the testimony.

7. It is further noticed, as pointed out, that complainant person has self contradicted. It seems that, he stated in the complaint that, there was contract between respondent accused and complainant on 18.09.1996, but at the time of verification of complainant before the court, the said contract was said to be of 22.03.1997. Therefore, complainant is not sure as to when there was contract between the parties. It also transpires that, on behalf of complainant, Namdeo Walke has filed the complaint and also stepped into witness box, but it seems that he himself did not present the cheque in question, rather one Accountant presented the same. Said Accountant is apparently not examined.

8. It also emerges from the re-analysis that, section 138 of N.I. Act mandates initiating proceedings even on receipt of legal notice and filing complaint within stipulated period on refusal to give cheque amount, at that point of time, complaint was expected to be filed within 15 days. It transpires that, here first notice was returned as 'not served' and therefore, second notice was issued. It was said to be 'refused'. Therefore, even taking the second notice into consideration, complaint was expected to be filed within 15

days. Time schedule as contemplated under N.I. Act also does not seem to have been adhered to.

9. Therefore, here, on analyzing and re-appreciating the entire evidence, it is noticed that, essential ingredients for attracting section 138 of N.I. Act are not cogently and firmly established. Complainant has not demonstrated that, there was legally enforceable debt. Very contract and agreement between the parties has not been proved. When and how much advance payments were paid and at what point of time, has not been elaborated. In the complaint it is stated that, time to time advances were paid and the amount allegedly due was shown to be Rs.2,11,000/- and some odd amount. Therefore, even aspect of legally enforceable debt is doubtful.

Therefore, on taking survey of entire evidence on record, essential ingredients for section 138 of N.I. Act are not made out.

10. Perused the judgment under challenge. Learned trial court has touched each and every aspect of the legal requirements of section 138 of N.I. Act. Substantive evidence of complainant and his witness has been properly appreciated. Legal requirements not

being met, the learned trial court has committed no error in acquitting the accused. Hence, the following order :-

ORDER

The criminal appeal is dismissed.

(ABHAY S. WAGHWASE, J.)