



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 810 OF 2004

Lalit Narayan Thakkar
Age: 35 years, Occu.: Service,
R/o. Jalgaon, On behalf of
Shri Agresen Urban Co-op, Credit
Society Limited,
E-Wing Gala No.26, 28, 30, 32,
IInd Floor, V.VMarket,
Jalgaon.

....Appellant

Versus

Narendra Gajanan Sharma
Age: 35 years, Occu.: Business,
Address-W-67, M.I.D.C.,
Jalgaon.

....Respondent

.....
Advocate for Appellant : Mr.Anand R.Bangar
Advocate for Respondent : Mr. S V Kulkarni
.....

CORAM : ABHAY S. WAGHWASE, J.

**RESERVED ON : 15 MARCH, 2024
PRONOUNCED ON : 01 APRIL, 2024**

JUDGMENT :-

1. Judgment and order passed by learned J.M.F.C. Ist Court, Jalgaon dated 14-10-2003 acquitting respondent from offence under Section 138 of the Negotiable Instruments Act (the NI Act) is assailed by original complainant by filing instant appeal.

BRIEF FACTS OF THE CASE

2. Appellant, who is a Co-operative Credit Society, extended loan of Rs.25,000/- to the accused, which was agreed to be repaid with interest. Towards repayment of same, accused issued cheque dated 09-05-1998 worth Rs.1419/-. On its presentation, it was returned dishonoured and therefore, after statutory notice, when accused failed to pay the cheque amount, proceedings under Section 138 of the NI Act was instituted.

3. Learned trial Court, on primary satisfaction, issued process against accused, who appeared and set up a defence denying issuance of cheque towards any repayment of loan or any liability. According to defence, there were no dues at his end.

Considering the case and defence, learned trial Court reached to a finding that complainant failed to prove his case beyond reasonable doubt, complainant failed to prove that there was legally enforceable debt and thereby acquitted the accused by judgment and order dated 14-10-2003.

Feeling aggrieved by the judgment and order of acquittal, original complainant preferred instant appeal raising several grounds enumerated in the appeal memo.

SUBMISSIONS

On behalf of appellant :

4. Learned Counsel for the appellant pointed out that complainant is a Co-operative Credit Society involved in extending loan to the needy on interest. Present accused, who is conducting business, had borrowed loan and towards repayment of installments had issued cheque. That both issuance of cheque as well as signature over it has not been denied or disputed and therefore, presumption available under the NI Act automatically came into play. Complainant had proved existence of all necessary ingredients to attract offence under Section 138 of the NI Act. Apart from examining one witness, documents like cheque in question, bank memo, legal notice were placed on record thereby making a full proof case, but still learned trial Court has acquitted accused. There is apparently improper appreciation both of evidence as well as of law and hence, he prays to allow the appeal by setting aside impugned judgment and order.

On behalf of Respondent :

5. Refuting above submissions, learned Counsel for accused respondent would point out that complainant has miserably failed to

establish legally enforceable debt. Moreover, according to him, complainant was not authorized to file complaint and in view of such fundamental defect, learned trial Court correctly acquitted the accused. According to him, both evidence wise as well as law wise, complainant had weak case and as such no fault can be found in the impugned judgment and order and so he prays to dismiss the appeal.

6. Heard. Re-appreciated the entire evidence.

ANALYSIS

7. Considering the nature of proceedings, complainant is expected to prove beyond reasonable doubt essential ingredients like existence of legally enforceable debt, secondly issuance of cheque, thirdly, dishonour of cheque and fourthly, issuance of statutory demand notice. There is further requirement that repayment of cheque is to be made within stipulated period, failing which accused is exposed to the risk of initiation of proceedings under Section 138 of the NI Act.

8. Here on going through the evidence, it seems that on behalf of complainant, he adduced evidence at exh.22 and one Shrikrishana Shamrao Moharir is examined at exhibits 38. That apart documents

relied are cheque in question exh.24, bank memo exh.45, copy of Resolution exh.34, statutory notice exh.27.

9. On carefully going through the stand taken by accused, it is emerging that apart from denying signature, he has set up a case that loan has been repaid alongwith interest, but he is seriously questioning authorization in favour of PW1 Lalit to file complaint and that there is no valid authorization.

10. Evidence of PW1 Lalit and PW2 Shrikrishana shows that accused has borrowed loan and he was to repay the same with interest. However, letter exh.23 goes to show that PW1 Lalit is admitting about loan to have been repaid. Therefore, primarily loan liability is not shown to be in existence on the date of complaint. The only issue which needs to be re-examined is valid authorization with PW1 Lalit to lodge complaint. For the same, evidence of **PW1** Lalit is again required to be revisited and the same is at exh.22.

The sum and substance of his evidence is that he works as Assistant Manager and he claims to be equipped with Resolution exh.34 dated 21-02-2000 passed by the Board of Directors to conduct prosecution. However, while facing **cross-examination**, this witness

seems to be re-examined in view of order passed below exh.33, wherein he has answered that he is carrying original proceedings book which is in his own handwriting. He deposed that meeting of the Board of Directors took place on 30-05-1998 resolving empowerment in favour of this witness to file case, but in cross-examination at the hands of learned counsel for accused, he has candidly answered as “it is true that at the end of resolution no.2, there is no signature. It is true that there is no endorsement by DDR about sanctioning and approval of the resolution.”

11. Therefore, apparently there is no valid authorization in favour of PW1 Lalit to institute complaint on behalf of complainant Co-operative Society i.e. Agresen Urban Co-operative Credit Society. Therefore, when PW1 Lalit was not legally authorized or equipped with effective Resolution to prosecute, prosecution itself fails for want of sanction and authorization.

Very recently Hon'ble Apex Court while deciding Criminal Appeal 270 of 2022 (Arising out of SLP (Cri.) No.3113 of 2018) in the case of *M/s.TRL Krosaki Refractories Ltd. v. M/s. SMS Asia Private Limited & Anr.*, decided on 22-02-2022, after dealing with several issues, which discussed in paragraph no.10 on the point of

competence of person to file complaint under Section 138 of the NI Act, in paragraph No.17 observed that “*the position that would emerge is that when company is the payee of the cheque based on which a complaint is filed under Section 138 of N.I.Act, the complainant necessarily should be the company which would be represented by an employee who is **authorized*** (emphasis laid).

Resultantly, in view of above ruling of a Bench of Hon’ble Apex Court, comprising of three Hon’ble Lordships, position is clear that there has to be a valid authorization with a person prosecuting the complaint under the NI Act. Here as stated above, cross-examination of PW1 Lalit categorical shows that though Resolution has been passed, it has not been endorsed and confirmed by causing signature.

Hence, no fault can be found in the conclusion drawn by the learned trial Court for dismissing the summary criminal case. No case being made out on merits, following order is passed :

ORDER

Criminal Appeal No.810 of 2004 is dismissed.

(ABHAY S. WAGHWASE)
JUDGE