IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 288 OF 2022

. Mohsin S/o Jahangir Shaikh
Aged : 29 years, Occu. : Education,
R/o. Islampura, Kasoda, Tal.Erandol,
District : Jalgaon. ….Applicant
(Orig. Accused)

Versus

1) State of Maharashtra

2) Salman Khan Abbas Khan
Age: 30 yrs., Occu. : Hawker,
Aksa Nagar, Kasoda, Tal.Erandol,
Dist. Jalngaon. ....Respondents

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Advocate for Applicant : Mr. Naseem R. Shaikh
APP for Respondent no.1 : Mr.N.B.Patil
Advocate for Respondent no.2 : Mr.Dipesh D. Pande

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 04 DECEMBER, 2024
PRONOUNCED ON : 13 DECEMBER, 2024

ORDER :

1. On account of conviction recorded by learned Judicial Magistrate First Class (JMFC), Erandol in SCC No.290 of 2017 for the offence under Section 138 of the Negotiable Instruments Act (NI Act), and confirmed by learned Ad-hoc Additional Sessions Judge,

Jalgaon in Criminal Appeal No.48 of 2019, instant criminal revision has been pressed into service.

2. Learned Counsel for the applicant points out that respondent - complainant instituted proceedings under Section 138 of the NI Act before learned JMFC, Erandol, who after appreciating evidence adduced therein, recorded guilt and sentenced applicant to suffer simple imprisonment for one month and to pay fine. It is pointed out that said judgment was questioned before the Sessions Court vide Criminal Appeal No.48 fo 2019 and the same was partly allowed, but conviction was confirmed i.e. order of fine amount has been set aside.

3. It is submitted that case set up by respondent - complainant was of hand-loan and towards repayment, cheque being issued, which was claimed to be dishonoured. However, learned Counsel for applicant submitted that firstly there was no transaction of any hand-loan and secondly, essential ingredients for attracting offence under Section 138 of the NI Act, were patently missing as according to him, applicant was not served with demand notice. He submitted that

respondent - complainant came with a case that he was selling bed-sheets by door to door visits. Therefore, he had no sufficient income even to lend hand loan. That such aspect has not been considered by both trial Court as well as First Appellate Court.

4. Learned Counsel for the applicant took this court through the judgment of trial Court, more particularly, observations in paragraph 12 and would submit that it was admitted that accused has not been served with demand notice. That there was no signature over RPAD acknowledgment, but still service is held to be good service.

5. Learned Counsel for the applicant pointed out that even there was no evidence about any friendly relation between respondent - complainant and applicant - accused so as to accept the version about friendly loan. Lastly, it is submitted that accused had issued cheque to a third person and not to complainant and the same has been misused. Thus, according to learned Counsel, such crucial aspects are lost sight of by the learned trial Court as well as First Appellate Court.

In support of above submissions, learned Counsel for the applicant sought reliance on decision of Hon'ble Apex Court in *M/s.Sarav Investment and Financial Consultants Pvt.Ltd. And Anr. v. Llyods Register of Shipping Indian Office Staff Provident Fund and Anr., AIR 2007 SC (Supp) 1688*, and decision of this Court in *(i) Inderchand s/o Mansukhlal Agrawal v. Shri L.H.Manwani, 2019 (1) NIJ 789* and in *Shaikh Farooq s/o. Shaikh Amir Bagwan v. Shaikh Rafiq s/o. Shaikh Ayyub, 2016(2) NIJ 456.*

6. Replying to above submissions, learned counsel for respondent - original complainant would submit that case of complainant has been proved beyond reasonable doubt in the trial Court itself. That all essential ingredients for attracting offence under Section 138 of the NI Act were available in the evidence. That demand notice is already received by accused. That both trial court and First Appellate Court have given concurrent findings about good service. Essential ingredients for attracting charge being made out by way of concurrent findings, guilt has been proved and hence, it is prayed that revision be dismissed for want of merits.

7. After considering the above submissions and on going through

the papers, it transpires that present respondent (original complainant) launched prosecution against present revisionist by invoking provisions under Section138 of the NI Act and setting up a case that due to friendly relations and due to financial crises, he extended Rs.20,000/- as friendly loan and towards its repayment, present revisionist issued cheque drawn on Central Bank of India, but on its presentation for realization, it was dishonoured with remarks "insufficiency of funds". As expected demand notice was despatched, but inspite of receiving the same, cheque amount was not arranged and given to complainant and so finally, above proceedings were instituted.

8. It appears that in trial Court, apart from his own evidence, respondent – original complainant adduced evidence of one more witness. Present revisionist appeared and contested the proceedings denying hand-loan and putting up a specific defence that cheque issued to one Shakir Ahmed fell in the hands of complainant and the same was misused. He even questioned friendly relations as well as financial capacity of complainant to extend hand-loan.

9. After appreciating cases advanced by each of the sides, trial Court accepted complainant’s version and case and recorded guilt of revisionist for offence under Section 138 of the NI Act. Said judgment was taken up in appeal, but such attempt went futile as First Appellate Court confirmed the trial Court’s findings and conclusion, hence, instant revision.

10. As stated above, here also similar defence is set up by applicant that there were no friendly relations, there was no financial capacity of complainant to issue hand-loan, notice was not received and finally misuse of cheque. After considering the papers and on going through both the impugned judgments, it emerges that accused did receive demand notice on 05-10-2017, the same is at exh.34 which is dated 03-10-2017. Therefore, though asserted that there is no notice, record shows it to be otherwise. Though very acquaintance with respondent - complainant is denied further questioning very friendly relation, while answering questions under Section 313 of the Code of Criminal Procedure itself, acquaintance is admitted by the applicant. Consequently, second defence set up here also pales into insignificance. Third defence taken that cheque issued in favour of one Shakir Ahmed fell in the hands of complainant and

the same is misused. However, except taking such stand, there is no foundation or material in that direction. There is no explanation nor there is any complaint by said Shakir Ahmed about complainant taking cheque issued in his favour by applicant. Moreover complainant's evidence finds support from CW2 Mushtaq Khan Mehmud Khan, who was party to the transaction of hand-loan. Consequently, here, strong presumption leans in favour of respondent - complainant and applicant - accused has failed to rebut the presumption. Both learned trial Court as well as First Appellate Court have also got themselves satisfied about case under Section Section 138 of the NI Act being made out. No infirmity is brought to the notice of this Court so as to interfere. The facts of the cases relied by the applicant are distinct and thus, cannot be made applicable to the case in hand. Resultantly following order is passed :

ORDER

Criminal Revision Application No.288 of 2022 stands dismissed.

(**ABHAY S. WAGHWASE**)
JUDGE

SPT