



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 1284 OF 2019

Subhadrabai w/o Shivdas Kamble
Age 50 yrs, Occ. Household,
R/o. Pakarsangvi Area, Swarajya Nagar,
Barshi Road, Latur, Taluka Latur,
District Latur.

... Applicant

Versus

Manoj s/o Bapurao Shinde
Age Major, Occ. Business,
R/o. Beside Animal Market,
Moti Nagar, Ring Road, Latur,
Taluka Latur,
District Latur.

... respondent

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Mr. N. D. Kendre, Advocate for the Appellant.

Mr. Ajaykumar P. Jadhav h/f Mr. P. P. More, Advocate for the Respondent.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 09.02.2024

Pronounced on : 15.02.2024

JUDGMENT :

1. Acquittal of respondent from offence under Section 138 of the Negotiable Instruments Act, 1981 [NI Act] prompted original complainant to prefer instant appeal, thereby questioning the legality and maintainability of the judgment and order dated 14.02.2018 passed by learned J.M.F.C. (Court No.4), Latur.

2. Present appellant instituted S.T.C. No. 1638 of 2013 on the ground that there was transaction of sale and purchase of a plot belonging to the complainant. That, during initial talk, Rs.10,000/- were paid as agreed and remaining amount was decided to be paid at the time of sale deed. Further case is set up that in between, due to medical exigency of son of complainant, amount of Rs.50,000/- was taken from accused and remaining amount was to be paid at the time of registry of the sale deed. According to the complainant, accused had thereby issued cheque dated 05.07.2013 towards the remaining amount of Rs.20,000/-, but on its presentation it was returned dishonoured and on receipt of bank memo, legal notice was dispatched demanding cheque amount. However, in spite of receipt of legal notice, cheque amount was not paid within the stipulated period and hence the complaint.

SUBMISSIONS

3. Learned counsel for the appellant would submit that transaction was proved and even accused respondent did not deny the same. There is copy of sale deed. That, as decided, after initial payments made at the time of agreement, remaining amount of

Rs.20,000/- was due towards accused and it was only towards such legal debt, he had issued the cheque. It is pointed out that issuance of cheque as well as signature over it is not disputed. Therefore initial presumption under Section 118 and 139 of the NI Act was available in favour of the complainant. It is further pointed out that accused could not rebut the presumption by adducing any cogent, reliable evidence. Therefore, learned trial court ought not to have acquitted accused. There is complete non-application of mind and improper appreciation while acquitting the accused. Hence, prayers for allowing the appeal.

Learned counsel for the appellant placed reliance on the following rulings:

1. ***Rajesh Jain v. Ajay Singh*** (2023) 10 SCC 148
2. ***Basalingappa v. Mudibasappa*** (2019) 5 SCC 418
3. ***Triyambak S. Hegde v. Sripad*** (2022) 1 SCC 742
4. ***T. Vasanthakumar v. Vijaykumari*** (2015) 8 SCC 378
5. ***Kishan Rao v. Shankargouda*** (2018) 8 SCC 165

4. In answer to above, learned counsel for the respondent-original accused would submit that, no doubt there was transaction of purchase of plot, however, initially Rs.10,000/- were paid and thereafter accused had also paid Rs.50,000/- for hospital expenses of the son of complainant and Rs.31,000/- were paid at the time of registry of sale transaction. However, even when there were no dues as claimed, cheque was presented carrying figure of Rs.20,000/-. So much was not the legally enforceable debt. Therefore learned trial court, according to him, has correctly appreciated the evidence as well as law and so he prays to dismiss the appeal for want of merit.

5. In the light of above, if we examine the record, it transpires that present appellant had filed S.T.C. No. 1638 of 2013 stating that accused purchased open plot of the complainant. That, at the time of purchasing plot, accused paid Rs.10,000/- as per agreement of sale and it was decided that remaining amount would be paid at the time of sale deed. It is further averred that son of complainant became ill. Therefore complainant demanded money to the accused and accused paid Rs.50,000/- to the complainant and further it was decided that remaining amount would be paid at the time of registry. It is alleged that at the time of registry, accused was not having the whole amount of consideration, but he paid Rs.31,000/- to the complainant and

issued cheque bearing no. 332288 for Rs.20,000/- dated 05.07.2013, but it was returned dishonoured and hence action under NI Act.

6. In support of such case, complainant seems to have examined herself at Exhibit 17 and has placed on record the cheque Exhibit 31, bank memo Exhibit 32, RPAD receipt Exhibit 34, acknowledgment Exhibit 35, legal notice Exhibit 36 and reply Exhibit 37.

In cross , complainant seems to have admitted that she was not acquainted with accused prior to the transaction. She has further admitted that she executed sale deed in favour of accused. She further admitted that she did not file any proceedings for cancellation of sale deed.

7. Defence of accused is that he has earlier made payment of Rs.10,000/- as token amount. According to him, at the time of sale deed, consideration was deficient and therefore he issued cheque of Rs.20,000/- and remaining consideration was paid in cash. But complainant refused to execute sale deed without whole consideration paid in cash and therefore registration was deferred.

8. It is pertinent to note that though complainant came with a specific case of sale transaction and intermittent payments by way of token amount and amount for medical expenses of her son and handing over cash of Rs.31,000/-, exactly for how much actual amount the deal was struck and finalized has not been stated by her so as to ascertain only part payment being received and not total consideration towards sale transaction being paid by the accused. Therefore, when complainant has apparently failed to pinpoint actual dues towards accused, it cannot be for sure said that cheque amount was the legally enforceable debt. Unless complainant establishes that amount of Rs.20,000/- was remaining and was legal debt, her case of commission of offence under Section 138 of the NI Act cannot be accepted.

9. On re-appreciating the evidence and on going through the judgment, this court does not find any infirmity in the findings and conclusion reached by learned trial Judge. Learned counsel for the appellant has placed some rulings on record but the facts in those cases being distinct than the facts of the case in hand, said rulings do not come to the rescue of the complainant. There being no merit in the appeal, it requires to be dismissed. Accordingly, I proceed to pass the following order:

ORDER

The appeal is dismissed.

[ABHAY S. WAGHWASE, J.]

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