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IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 13 OF 2020
WITH
CRIMINAL MISC. APPLICATION NO. 61 OF 2020.
IN
CRIMINAL REVISION APPLICATION NO. 13 OF 2020

NARENDRA CHANDRAKANT NAIK ....Applicant.

Versus

VPK CO-OPERATIVE CREDIT SOCIETY LTD, REP. BY ITS AUTH. REP., SIDDESH MADKAIKAR., ...Respondent.

Mr. Preetam Talaulikar, Advocate for the applicant.
Mr Jatin Ramaiya and Mr Omkar Parab, Advocate for the respondents.

CORAM: **BHARAT P. DESHPANDE, J.**
Date: **1st July 2024.**

ORAL ORDER.:

1. Heard Mr. P. Talaulikar, learned counsel for the applicant and Mr J. Ramaiya, learned counsel for the respondent.

2. Revision is filed challenging the concurrent findings of the Courts below wherein the applicant was found guilty for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881("N. I. Act" for short) and accordingly sentenced to suffer imprisonment as well as to pay compensation.

3. Respondent/Society granted a vehicle loan in favour of the applicant/borrower to the tune of Rs.10,00,000/- with the understanding that the applicant shall repay the said loan on instalments as agreed between the parties.

4. The applicant/Borrower committed default in repayment of the loan amount and accordingly, society called upon the applicant to pay the entire loan amount along with interest.

5. It is the case of the society that the applicant/borrower issued cheque dated 9.10.2013 in favour of the society amounting to Rs.11,99,264/-, towards full and final settlement of the loan amount. Society on presentation of the cheque for encashment received a cheque return memo disclosing that the cheque is returned for insufficient funds in the account maintained by the applicant. Accordingly, demand notice was issued by the applicant dated 24.12.2013 asking the applicant to pay entire amount mentioned in the cheque within a period of 15 days from the date of receipt of the notice.

6. The applicant/borrower failed to repay such amount and accordingly, complaint was lodged before the concerned Magistrate for the offence punishable under Section 138 of the N.I. Act.

7. Learned Magistrate after conducting the trial held applicant/borrower guilty for the offence punishable under Section 138 of the N.I. Act and sentenced him to undergo simple imprisonment for six months and to pay fine of Rs. 13,00,000/- and in default to undergo simple imprisonment for six months.

8. Applicant unsuccessfully challenged the order passed by the Magistrate in Criminal Appeal No 77/2017. The First Appellate Court vide its judgment dated 31.12.2019 confirmed the order of the learned Magistrate thereby dismissing the said appeal.

9. Mr Talaulikar, learned counsel appearing for the applicant/borrower would submit that though signature on the cheque is not disputed, the quantum mentioned in the cheque is certainly in dispute. He further submits that there is no material placed on record to show that the applicant issued such cheque only after the notice was served upon him by the society and in response to it. He would submit that the cheque was earlier handed over as a security, however, the amount due and payable is not the one which is mentioned in the cheque. He would submit that some part payment was made by the borrower to the complainant and some extra charges were levied in the account books and particularly in the account of the present borrower which the applicant is not liable to pay to the society. He would therefore submit that both the Courts failed to consider this aspect and only because signature is not disputed passed an order of conviction.

10. Mr Ramaiya appearing for the society would submit that all the necessary documents were placed before the Magistrate including statement of account which clearly shows that as on the date of issuance of cheque, an amount of Rs. 11,99,264/- was due and payable. He would submit that legal notice was served upon the applicant. However, there was no response which would clearly go to show that the applicant had no defence at all. He further submits that statement of account along with other documents placed before the Magistrate were not disputed at all and thus now the applicant cannot claim excess amount charged by the society.

11. Rival contentions fall for determination.

12. It is an admitted fact that the society granted a loan in the name of the applicant for the purchase of a vehicle. Necessary documents were signed by the applicant for the purpose of sanctioning and disbursement of the said loan. Statement of account produced on record dated 23.10.2013 would clearly go to show that loan was sanctioned on 3.7.2012 and thereafter except for some payment, no instalments were paid. Debit balance as on 14.10.2023 shows Rs.11,99,464/- thus, the cheque dated 9.10.2013 for Rs.11,99,264 is clearly outstanding balance shown against the applicant.

13. The contention of Mr Talaulikar that there is no material to show that after legal notice was issued, the applicant/borrower issued a cheque in question, needs to be out rightly rejected for the simple reason that even the cheque is issued by way of security, fact remains that entire handwriting as well as signature on the said cheque is that of the accused. The amount mentioned in the cheque is clearly shown as the outstanding amount in the loan account.

14. Besides, no reply was sent by the applicant after receipt of the notice issued by the society when the cheque was returned unpaid. Thus, it is clear that even though notice was served upon the applicant, he even did not reply to it which clearly suggests that at that moment there was absolutely no defence available with the applicant.

15. This Court has already discussed the issue regarding the importance of the giving reply to the notice, which is the first opportunity to the borrower or the accused to put his defence. Proceedings under Section 138 of the N. I. Act are quasi criminal in nature and, therefore, particulars in criminal jurisprudence with regards to accused not disclosing his defence, will not strictly apply to this matter. Reasons are clear and obvious. Offence stands completed only on completion of 15 days time from the date of receipt of the notice under section 138 of the N.I. Act and that too on failure to pay the amount. If the accused/borrower pays the amount within 15 days from the date of receipt of the notice, there is no offence at all. Thus on the date of receipt of the notice, borrower or defaulter is not considered to be an accused, he becomes accused only on failure to pay the amount within the time frame mentioned in the notice. Thus, any reply issued by the defaulter even disclosing his defence will not be considered as affecting the right of the so called accused.

16. Second opportunity for the accused was to step in the witness box and to rebut the presumption in connection with the amount mentioned in the cheque. Cross examination of the complainant and the documents placed on record, would clearly go to show that the complainant was very much entitled to raise the presumption under Section 139 of N. I. Act. In absence of any material from the applicant/accused to rebut such presumption, the Court was duty bound to presume that the cheque was issued in discharge of legally recoverable debt.

17. Once the signature on the cheque is admitted, the complainant is not required to prove anything more and the Court is duty bound to draw presumption under Section 139 of the N.I. Act. Thus, the contention of Mr Talaulikar that the complainant was required to prove that the cheque was issued by the accused after legal notice was served upon him, cannot be looked into in view of the presumptive value in favour of the complainant.

18. Learned Magistrate as well as First Appellate Court considered these aspects and accordingly such findings cannot be termed as perverse or illegal and that too in revisional jurisdiction. Jurisdiction of this Court in a revision is limited and re-appreciation of the evidence is not permissible. Only aspects of illegality and perversity could be looked into, which is absent in the present matter. Accordingly, no case is made out to interfere with the orders passed by both the Courts below.

19. In the above circumstances, revision stands dismissed. Parties shall bear their own costs. The applicant shall surrender before the learned Magistrate to serve sentence within a period of two weeks.

20. Criminal Revision Application and Criminal Misc. Application stand disposed of in above terms.

BHARAT P. DESHPANDE, J.