



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 209 OF 2006

Shri. Dnyanoba s/o Ginyandev Bhise

...Appellant

Versus

Munja S/o Balaji Bhise,
Age: Major, Occ: Agri,
R/o. Kolawadi, Tq. Manwat,
Dist. Parbhani

...Respondent

- Mr. R. R. Kale h/f Mr. R. J. Nirmal, Advocate for the Appellant
- Mr. S. J. Salunke, Advocate for the Respondent

CORAM : ABHAY S. WAGHWASE, J
RESERVED ON : DECEMBER 01, 2025
PRONOUNCED ON : DECEMBER 02, 2025

JUDGMENT :

1. Judgment and order of acquittal dated 16.07.2005 passed by learned JMFC, Selu in S.C.C. No. 100/2002 is taken exception by original complainant in instant appeal.

2. In nutshell, present appellant instituted above proceeding on the premise that in May, 2000 accused respondent approached complainant for hand loan of Rs. 34,500/- and agreed to repay it in three months and in lieu of it, accused issued cheque and complainant and accused being both residents of one village, he extended the hand loan. After three months, repayment was sought for but accused sought extension of time of a year.

Even there was agreement between the parties. Again, after one year when demand was made for repayment of loan, accused suggested depositing the said cheque, which was duly tendered in the bank for realization but the same was returned dishonored. Therefore, as required legal notice was dispatched, however, in spite of receipt of the same, there was failure to return and, therefore, complaint was instituted.

3. Above complaint was resisted by accused denying advancing hand loan and handing over of cheque or execution of any agreement. On other hand, his stand was that due to political rivalry, there was false implication. Moreover, there are alterations and additions in the cheque and the same were behind his back and without his consent.

4. Learned trial Court formulated necessary points and appreciated the oral and documentary evidence i.e. evidence of complainant, witness on behalf of complainant who was branch manager, documentary evidence, like original cheque exhibit 23, agreement exhibit 24, bank memo exhibit 25, office copy of notice exhibit 26, legal notice exhibit 27 and postal acknowledge exhibit 28.

After appreciating oral and documentary evidence, learned trial Court was pleased to reach to a finding that complainant failed to make out the case of hand loan. Moreover, case of complainant is rendered doubtful on account of alterations and additions on the cheque in question. The

cheque was not of the year in which loan was alleged to be extended and thereby considering suspicious circumstances, learned trial Court by judgment and order dated 16.07.2005 acquitted the accused.

Feeling aggrieved by the above judgment and order of acquittal, complainant has preferred instant appeal.

5. Heard. Perused the record as well as written arguments.

6. According to learned counsel for appellant, Trial Court failed to appreciate oral as well as documentary evidence. That, it also failed to consider that complainant had evidence of brach manger itself i.e. of the bank which had issued memo of dishonour. That, such witness had identified the cheque and, therefore, with such quality of evidence, it is his submission that strong presumption arose against accused. Accused failed to rebut the same. He next submitted that, whatever alterations carried out, the same were not material in view of section 87 of Negotiable Instruments Act. On the contrary, accused himself had carried out the corrections and alterations and also put up necessary initials. According to him, all necessary ingredients for attracting Section 138 of N.I. Act are available but same were not considered properly and hence, learned counsel urges to allow appeal by setting aside impugned judgment and order.

7. Learned counsel for respondent original accused would support

the judgment and order of Trial Court and urges to dismiss the appeal for want of merit.

8. After considering above submissions and on going through the record, it emerges that S.C.C. No. 100/2002 was instituted by present appellant on the premise that accused took hand loan of Rs. 34,500/- and assured repayment within three months and also executed cheque as well as an agreement and the same are at exhibits 23 and 24. However, it is emerging that cheque in question is of May, 2000, however, there seems to be some alterations with regard to year 2001.

9. Stand is also taken by complainant that, when repayment of loan was sought, time for extension was urged for and it was duly granted and, therefore, in the instrument cheque necessary corrections to the extent of year were carried out. Such alterations and signature over it is disputed by accused. There is not only alteration with regard to year but there are also alterations with regard to amount for which there is no satisfactory explanation.

10. Alleged agreement exhibit 24 seems to be contrary to the case of complainant regarding extension of time. Even in the legal notice, there is no reference about accused seeking extension of time to repay the hand loan. Though complainant has submitted that agreement was in presence of

witnesses, the same were not examined. Even in the body of complaint, there is no reference about accused seeking extension of time to repay which find in place in his evidence before the Court.

Therefore, there are various circumstances which creates suspicion. Case of accused is of denial. Unless complainant establishes transaction of hand loan, presumption cannot be brought into play.

11. For above reasons, no fault can be found on the part of trial Court in refusing to accept the case of complainant. No point on merit being raised in the appeal, following order is passed.

ORDER

Criminal Appeal stands dismissed.

(ABHAY S. WAGHWASE, J.)

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