2025:BHC-AUG:3928

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 485 OF 2005

Mirajgaon Nagari Sahakari
Pat Sanstha Maryadit, Mirajgaon,
Taluka Karjat, District Ahmednagar,
Through Shri Dnyanoba Ganpat
Khetmals, aged 65 years, Occ.
Business, R/o Mirajgaon, Taluka
Karjat, District Ahmednagar.

....Appellant
(Ori. Complainant)

VERSUS

Ramesh Baban Kolhe,
Age: 45 years, occupation
agriculture, R/o Mirajgaon,
Taluka Karjat, Dist. Ahmednagar

.....Respondent
(Ori. Accused)

.....

Mr. Ram B. Deshpande, Advocate for appellant.
Mr. Z. H. Farooqui h/f Mr. N. V. Gaware, Advocate for Respondent.

.....

CORAM	:	**SANDIPKUMAR C. MORE, J**
Reserved on		**4th FEBRUARY, 2025**
Pronounced on	:	**10th FEBRUARY, 2025**

JUDGMENT :-

1. The appellant, i.e. Mirajgaon Nagari Sahakari Pat Sanstha Maryadit (for short, Credit Society) is the original complainant, who has preferred this appeal for challenging the judgment and order dated 28th

February, 2005 in S.T.C. No.503 of 2001, passed by the learned Judicial Magistrate First Class, Karjat, District Ahmednagar. In the impugned judgment, the learned Trial Court has acquitted the present respondent i.e. original accused from the charge under Section 138 of Negotiable Instruments Act.

2. According to the appellant/Credit Society, wife of respondent/accused had obtained loan from it, but she could not repay the same. Therefore, the respondent/accused on 30.01.2001 had issued cheque of Rs. 49,065/- to the appellant Credit Society against the loan outstanding of his wife. The said cheque was dishonored and despite notice, the respondent accused could not pay the amount and hence prosecution under Section 138 of Negotiable Instruments Act was lodged against him. The learned Trial Court after conducting the trial, acquitted the present respondent/accused, hence, this appeal.

3. The learned counsel for the appellant/Credit Society vehemently argued that the learned Trial Court

did not consider the fact that the respondent accused had given cheque for clearing the outstanding loan amount of his wife. He pointed out that signature on the cheque was not disputed by the respondent/accused and therefore, the learned Trial Court should have presumed that the cheque was given for discharge of legal liability. He relied on the judgment in the case of ***ICDS Ltd. Vs. Beena Shabeer & another in Criminal Appeal No.797 of 2002, decided on 12.08.2002.***

4. On the contrary, the learned counsel for the respondent/accused supported the impugned judgment and pointed out that no evidence was laid by the appellant/Credit Society to show that the amount of cheque was legally enforceable from him. According to him, respondent/accused had also taken loan from the appellant/Credit Society which he repaid and at that time, he had kept certain cheques with the Credit Society for security and one of such cheques was mis-used by the appellant/Credit Society. As such, he

prayed for dismissal of the appeal.

5. Heard, rival submissions, also perused the documents on record alongwith the impugned judgment and citation relied upon.

6. Admittedly, it is the case of appellant/Credit Society that the respondent/accused had issued cheque against the outstanding of loan of his wife. However, the record shows that the appellant/Credit Society did not adduce any evidence or documents to establish the fact that wife of respondent/accused was in default and the amount of cheque was due from her. Moreover, no evidence is brought by the appellant/Credit Society on record to establish the fact that respondent/accused had undertaken liability of repayment of loan of his wife and in lieu of the same, he had issued the cheque in dispute. It is extremely important to note that there was no legal liability for the respondent accused to issue cheque for the loan of his wife.

7. The learned counsel for the appellant/Credit Society heavily relied on the judgment in the case of ***ICDC Ltd. Vs. Beena (supra)***. However, on going through the said judgment, the facts of that case are totally different from the facts of this case. In that case, the cheque was issued by the guarantor towards the payment of dues outstanding against the principle debtor. Therefore, the Hon'ble Apex Court had observed that the cheque was issued in discharge of any debt or other liability. The guarantor who had issued the cheque was definitely under liability of paying the debt in that case alongwith the principle debtor. However, in the present case, the respondent/accused had never stood guarantor to the loan obtained by his wife. As such the aforesaid judgment is not at all applicable in the instant case. The Trial Court has, therefore, observed that the appellant/Credit Society fail to prove the material ingredient of Section 138 i.e. drawing of cheque in discharge of legally enforceable debt or liability. In absence of such material ingredient, the

respondent/accused cannot be held guilty for the offence under Section 138 of Negotiable Instruments Act.

8. Further, the respondent/accused had already given explanation under 313 of Criminal Procedure Code by contending that he had also obtained loan from the appellant/Credit Society and at that time, he had given some cheques to the Credit Society and out of those cheques, one in the present case, is mis-used. It is now settled that the respondent/accused is not supposed to lead any evidence to establish his defence. On the contrary, it can be done by securing certain admissions in the evidence of complainant and by preponderance of facts. Moreover, it is also settled that unless the complainant establishes the ingredient of the offence by adducing reliable evidence, the burden of proof does not shift upon respondent/accused. Here, the appellant/Credit Society has in fact failed to establish the ingredients of offence and therefore no presumption under Negotiable Instruments Act can be

drawn that the cheque in dispute was issued in discharge of legally enforceable debt. Considering all these aspects, there is no substance in the appeal and it stands **dismissed** accordingly.

(SANDIPKUMAR C. MORE, J)

Rushikesh/2025