



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.784 OF 2005

Managing Director,
Chopda Shetkari Sahakari Karkhana Ltd.,
Chahardi, Tq. Chopda, Dist. Jalgaon.

... Appellant
(Orig. Complainant)

Versus

1. Rajendra Sadashiv Lokre,
Age : 48 years, Occu. : Business,
R/o. Behind Manohar Theatre,
Dhule, Dist. Dhule

2. The State of Maharashtra

... Respondent

.....
Ms. Pallavi Gavande h/f. Mr. V. B. Patil, Advocate for Appellant.
Mr. Tapan K. Sant, Advocate for Respondent No.1.
Mr. S. S. Dande, APP for Respondent No.2 - State.

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CORAM : ABHAY S. WAGHWASE, J.
RESERVED ON : 31 JULY 2025
PRONOUNCED ON : 12 AUGUST 2025

JUDGMENT :

1. Original complainant, who instituted proceedings under section 138 of Negotiable Instruments Act against present respondent, has hereby taken exception to judgment and order of acquittal passed by learned J.M.F.C., Chopda, dated 05.02.2004 in S.C.C. No. 119 of 1996.

2. In brief appellant's case before trial was, that

complainant is a sugar factory. They entered into an agreement with present respondent – original accused for transporting sugarcane. On request of original accused, it is complainant's case that accused borrowed advance of Rs.20,000/- and such demand was complied by taking a note in the ledger. Accused failed to meet the commitment and undertaking, consequently legal notice was dispatched for return of the amount, however, still accused failed to respond. On persuasion accused issued cheque, but on its presentation it was dishonoured. Complainant by way of resolution authorized PW1 Prabhakar to take necessary steps for recovery. Proceedings under section 138 of N.I. Act were instituted, wherein both, oral and documentary evidence was adduced. Accused denied legal debt. Learned trial Judge appreciated the evidence and vide judgment and order dated 05.02.2004 acquitted the accused. Hence, the appeal.

3. Learned counsel for appellant apprised this court about above factual background and would emphasize that accused has taken advance cash of Rs.20,000/-. That, there is noting of the same in the ledger. That, sugar factory had by way of resolution authorized PW1 Prabhakar to take necessary steps for recovery. That, said resolution is the part of record. That, bank official is also examined to demonstrate and establish presentation of cheque issued by accused and its dishonour. According to learned counsel, legally enforceable

debt was established. As required legal notice was dispatched and it was also received by accused, but he failed to repay the cheque amount. Thus, according to learned counsel, all legal requirements were met, however, learned trial court failed to appreciate the oral and documentary evidence as well as law and erred in acquitting the accused. Hence, it is urged that appeal be allowed.

4. In answer to above, learned counsel for respondent supported the impugned judgment by pointing out that, complainant appellant failed to make out the case under section 138 of N.I. Act. That, there was no legally enforceable debt. That, there is no evidence about alleged borrowing or advance. That, legal requirements of 138 of N.I. Act are completely missing. Alleged notice is undated. That, there is no proof of service of notice. He would point out that, cheque issued for security was misused. Hence for above reasons, he supports the findings and conclusion reached at by learned trial Judge and prays to dismiss the appeal for want of merits.

5. Reanalyzed the evidence i.e. both, oral and documentary evidence. Apart from adducing evidence of one Prabhakar Gurav, there is evidence of one Clerk of Jalgaon District Central Co-operative Bank Limited. Complainant had adduced documentary evidence like cheque in question, memo, legal notice and postal acknowledgment.

6. As stated, PW1 Prabhakar deposed at Exh.24 that he serves as a Clerk in the sugar factory. Resolution was passed by sugar factory authorizing him to look after the case, which he identified to be at Exh.25. He reiterated about accused taking advance of Rs.20,000/- for executing the work, but committed breach of contract. Cheque issued on demand towards repayment was also dishonoured, and therefore, after issuing notice, when there was failure to repay, complaint was filed by him. His cross examination, more particularly paragraphs 6, 7 and 8, with relevant portions, are as under:-

"Cross Exam by Mr. Barma Adv.

"I am serving in the Sugar factory since 1994 as a clerk I am dealing with agriculture table. I am not signatory of this complaint. It is not true the M. D. has no right to launch the complaint. I have not produced such resolution. The resolution Exh.25 does not give details of this case. So as to point out I have been authorised for this case. It is true Exh. 25 authorise two more person alike me. Not true I have no right to give evidence for and on behalf of complainant.

Qus. Can you details of the agreement took place between the complainant and accused?

Ans. : Yes.

The accused had agreed to carry sugarcane in his truck from the land of agriculturist to the factory.

I cannot say whether accused has furnished any surety. The portion mark A in the complaint now read over to me that the agreement was regarding surety is correct. Not true to say in view of the surety agreement a blank cheque under signature of accused was obtained from him. I have not produced document to show that accused demanded advance. It is not true no amount was paid in advanced to accused. On giving advance payment to the accused receipt in that regard was given by the accused in favour of the complainant. I have not produced said receipt. I cannot assign any reason why it has not been produced. I cannot specify the date on which the complainant demanded the refund of advance payment. I have not produced copy of earlier demand notice. It is true my complaint is silent regarding earlier demand. Not true as no demand was raised therefore such contention is not raised in the complaint.

7. *It is not true the accused had given the cheque exh.27 to the complainant as a security. It is not true it was the bank cheque and the complainant has filled other details in the cheque. Not true the cheque was not tendered in the bank for encashment.*

8. *It is true it is not mentioned in the complaint that the bank intimation shows the word "Referred to Drawer is not written. It is true the very endorsement is not written in the notice exh. 29. I cannot say any reason thereof. It is not true it is incorrectly written in the complaint that the accused was knowing that there is no sufficient fund in his bank account at the time of issuing cheque. It is not true it is incorrectly written in the complaint that the cheque was returned unpaid due to insufficient fund in the account of accused with the bank."*

7. Another witness PW2 is Ravishankar Gujarathi a Clerk of the Bank and he in his evidence at Exh.33 testified about account of bank with them, about receipt of cheque drawn by accused, it being dishonoured with remark "insufficient funds". He identified bank memo.

8. Learned counsel for appellant submitted that all legal requirements of section 138 of N.I. Act were met and available. However, here, though PW1 Prabhakar deposed about contract being entered between accused and complainant, copy of the same is not placed on record. Only extract of ledger entry is placed on record, but unless it carries details of need for payment, mere oral submissions and ledger copy would itself not be sufficient to accept the case of any agreement and contract being forged between the parties.

9. *Secondly*, on re-appreciation it is emerging that, in cross examination, PW1 Prabhakar has admitted that, in the very complaint under section 138 of N.I. Act, there is no reference about endorsement or remark "Referred to Drawee". He has also admitted that, even demand notice allegedly issued to the accused, is also silent on above aspect.

10. Learned counsel for respondent has denied very receipt of legal notice. It is pointed out that, Exh.29 so called notice is

undated. On visiting said Exhibit, apparently it is undated. Date has bearing because 138 of N.I. Act requires timeline to be followed for presentation of cheque, requirement of clear remark on bank memo/intimation and further requirement on dispatching notice. However, here notice is undated and therefore complainant's case suffers a serious impact.

11. The Hon'ble Supreme Court in the case of ***H. N. Jagdeesh v. R. Rajeshwari***, (2019) 16 SCC 730, held that, "*service of a statutory notice demanding payment is a necessary precondition for filing a complaint under Section 138*". Here, as stated above, very notice is undated and therefore exactly when it was issued and when it was received is not cogently proved.

12. Therefore, *prima facie*, essential requirements of section 138 of N.I. Act are patently missing in the appellant's case before trial court.

13. Specific defence of accused is that, there was no legally enforceable debt and complainant failed to discharge the very primary burden of proving existence of legally enforceable debt. Stand taken is of issuance of cheque for security. The Hon'ble Apex Court in the case of ***Sudhir Kumar Bhalla v. Jagdish***, (2008) 7 SCC

137 held that, *“the offence under section 138 of the N.I. Act applies when cheques are issued to discharge a debt or other liability, not when issued as security”*.

As stated above, no case even for drawing presumption available under section 139 of N.I. Act is made out. On the contrary, in view of above discussion, there are several technical and vital defects. As pointed out by learned counsel for respondent, doubt is also entertained about authenticity of signature of accused respondent over the instrument and there is discussion on this by the trial court in paragraph 24 of the judgment. Learned counsel for appellant has not clarified such findings nor has challenged it.

14. To sum up, here, complainant has failed to make out a case for action under section 138 of N.I. Act. This court finds no fault or perversity so as to interfere in the impugned judgment. Hence, appeal is dismissed.

(ABHAY S. WAGHWASE, J.)