2025:BHC-NAG:13954

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

CRIMINAL APPEAL NO.14/2010

Warud Urban Co-operative Bank Ltd.,
Warud Registered No.576, Warud,
Tq. Warud, Dist. Amravati, through
its Manager, Pravin Madhukarrao Dandale,
Aged 36 yrs, Occ. Service, R/o. Warud,
Tq. Warud, Dist. Amravati.

...**APPELLANT**

VERSUS

1. Mr. Kuramdas Dnaneshwarrao Satpute, Aged about 44 yrs, Occ. Farmer, R/o. Belona, Tq. Morshi, Dist. Amravati.

2. The State of Maharashtra through P.S.O. Wardu, Police Station, Warud, Dist. Amravati.

...**RESPONDENTS**

Mr. Sudhir Malode, Advocate for appellant.
Mrs. S.W. Deshpande, Advcoate for respondent No.1
Mr. Bhagwan M. Lonare, APP for respondent No.2.

CORAM : M. M. NERLIKAR, J.

DATE : 09.12.2025

ORAL JUDGMENT :

Heard the learned counsel for the appellant, respondent and learned APP for State.

2. The present appeal is against the order of the acquittal dated 27.07.2009 passed by the learned Judicial Magistrate First Class, Court No.2, Warud. The case of the complainant/ appellant is that the respondent/accused has obtained the loan, and the cheque in dispute was issued towards the repayment of his loan. The learned counsel for appellant submits that issuance of cheque and signature on the cheque is not disputed by the accused and therefore presumption under Sections 118 and 139 of the Negotiable Instruments Act ('NI Act') ought to be invoked. The respondent has failed to discharge his burden, therefore, the Court ought to have convicted the accused person. The complainant has duly proved his case by examining PW-1 Pravin Dandale. In his evidence, he has deposed about giving. However as the accused has failed to repay the amount, the accused has issued cheque of Rs.7,71,767/- bearing cheque No.142179 dated 07.03.2007. He further submits that when the complainant had deposited the cheque for realization, it was dishonored due to insufficiency fund which the information was received on 13.03.2007, thereafter the complainant issued

a notice to accused by RPDA on 03.04.2007 which was received by the accused on 04.04.2007. The notice was served, however the accused has failed to reply the notice, therefore as accused has failed to repay the amount, the complaint was filed. The learned counsel for appellant further submits that the complainant has duly proved that the cheque has been issued by the accused, wherein his signature appears. As the accused failed to repay the loan amount, therefore he had issued the cheque. The entire facts are duly proved, therefore the Court ought not to have acquitted the accused.

3. On the other hand, the learned counsel for the respondent submits that admittedly, the accused has taken loan amount of Rs. 2,50,000/- in two installments. The first installment was obtained of Rs. 1,00,000/- on 29.03.2003 and second installment was obtained of Rs.1,50,000/- on 14.02.2004. It is his further defence that at the time of the loan, the accused had issued Exh.50 and Exh.49 which are mortgage deeda dated 08.04.2003 and 19.03.2004 respectively. Further, while granting loan by the complainant, the complainant/Bank has taken

five blank cheques as security. In spite of repayment of entire loan amount, the complainant insisted to pay more and when the respondent refused, the complainant had taken undue advantage of the blank cheques, which were giving as a security. He further submits that though the respondent/accused paid the entire amount, however the aforesaid entries were not taken in the account extract statement at Exh.34. One of the receipt which was placed on record of Rs.39,000/-, the said entry is not appearing in the statement of the accused at Exh. 34 therefore, the statement of account cannot be belived. It was admitted by the PW-1 that while taking instqallment, the respondent had executed deed of mortgage at Exh.50 on 29.03.2003 and in lieu of second installment, deed of mortgage was executed on 14.03.2004 at Exh.49 against loan of Rs.1,00,000/- and Rs.1,50,000/- respectively. He submits that the complainant has come with a new theory, wherein the loan amount was shown as Rs.6,00,000/-. There is nothing in the evidence, even in the complaint to suggest that Rs.6,00,000/- were obtained as loan by the accused, therefore this fact itself would falsify the entire case of the complainant. He submits that there is no documentary evidence so far as the payment of Rs.6,00,000/- is concerned and accordingly he submits that the Trial Court has appreciated the entire evidence in its true perspective and come to the right conclusion by acquitting the accused.

4. Upon hearing the learned counsel for appellant, learned counsel for respondent and learned APP for respondent/State, admittedly, it appears that the cheque was issued by the respondent/accused. It further appears that the respondent has obtained the loan from the complainant-bank. The cheque was issued for Rs. 7,71,767/- dated 07.03.2007. Admittedly, this cheque was dishonored and the information was received by the complainant on 13.03.2007. Thereafter, statutory notice was issued on 03.04.2007 and the said notice was served on 04.04.2007. It further appears that the respondent has failed to reply to the said notice and thereafter as the respondent/accused failed to repay the loan amount in spite of notice, the

complainant constrained to file complaint under Section 138 of the NI Act against the accused.

5. After filing of the complaint, the complainant has led evidence by examining the Manager of the Bank Pravin Dandale-PW-1. Further, the accused has also examined himself. Both the witnesses have been cross-examined. It appears from the record that the defence of the accused is that he has obtained Rs. 2,50,000/- in two installments. First installment is of Rs.1,00,000/-, second is of Rs.1,50,000/-. It further appears that for obtaining the aforesaid loan Exh. 49 and Exh.50 were executed, as security which are mortgage deeds.

6. Considering the above, it is necessary to ascertain from the record whether as argued by the learned counsel for the appellant that the complainant bank has given a loan of Rs.6,00,000/- or not. Upon perusal of the documentary evidence, admittedly one fact is clear that Exh.50 and 49 are the mortgage deeds for the loan obtained on 29.03.2003 and 14.02.2004 of Rs.1,00,000/-and Rs.1,50,000/- respectively.

Had it been the case that a loan of Rs. 6,00,000/- was obtained by the accused then naturally the Bank would have shown the other mortgage deeds showing the property being mortgaged for Rs.6,00,000/- as security, however failure on part of the complainant-bank to produce the same shows that Rs.6,00,000/- was not obtained by the respondent. Further, as observed by the Trial Court that the account Extract at Exh.34 cannot be believed for the reasons that the entries were not properly maintained in the said account extract. The respondent has placed on record the receipts wherein it could be gathered that he has repaid the loan amount of Rs.2,50,000/- wherein one receipt is of Rs.39,000/- at Exh.34 was not shown in the account extract thought the said receipt is dated 26.12.2007, the entry was shown on 31.03.2008.

7. It is pertinent to note that the case was instituted on 07.05.2007 that means, there were many opportunities to manipulate account extract at Exh.34, therefore, it is necessary to draw adverse inference against the complainant Bank as they have failed in their duty to maintain extract as per Rules. It is

further to be noted that in the cross-examination PW-1 as specifically admitted that the respondent has executed the mortgage deed at Exh.50 and Exh.49 against loan obtained of Rs.1,00,000/- and Rs. 1,50,000/-.

8. As argued by the learned counsel that the cheques were taken by the complainant bank as security which is probable under the above circumstances. Therefore, if the cheques are taken by the bank as a security, under such circumstances, it cannot be said that the cheques were issued for repayment of legally enforceable debt. In view of this, the complainant has utterly failed to prove its case beyond reasonable doubt, therefore, the Trial Court has rightly appreciated the entire evidence and acquitted the respondent.

9. Considering the above circumstances, there is no merits in the appeal and same is accordingly dismissed.

(M. M. NERLIKAR , J.)

Gohane