IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO.61 OF 2014

Anant Nagari Co-op. Credit Society Ltd.,
Risod, through its G. Manager,
Shri Gajanan Shankarrao Jadhao,
Age about 39 Years, Occupation: Service,
R/o. Risod, Taluka Risod, District Washim. **..... APPELLANT**

// VERSUS //

1) Ashok Dnyanba Ulemale,
Aged about 45 Years, Occupation: Service,
R/o. Mali Galli, Devi Chowk, Risod,
Taluka Risod, District Washim.

2) State of Maharashtra,
through Police Station Officer, Risod,
Taluka Risod, District Washim. **.... RESPONDENTS**

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Mr. V. K. Paliwal, Advocate for appellant.
Mr. J. B. Gandhi, Advocate for respondent No.1.
Mr. N. B. Jawade, APP for respondent No.2/State.

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CORAM : URMILA JOSHI-PHALKE, J.
RESERVED ON : 16.12.2024
PRONOUNCED ON : 03.01.2025

JUDGMENT :

1. Heard.

2. **Admit**.

3. By this appeal, the appellant Anant Nagari Co-operative Credit Society Limited, Risod has challenged the

Judgment and order of acquittal passed by learned Sessions Judge, Washim in Criminal Appeal No.13/2008 whereby the accused is acquitted for the offence punishable under Section 138 of Negotiable Instruments Act (for short 'N.I.Act').

4. The brief facts of the complainant's case are as under:

The complainant is the Co-operative Credit Society registered under the Maharashtra Co-operative Societies Act, 1960. Mr. Gajanan Shankarrao Jadhao is the authorized person authorized by the Society vide resolution. The accused is a member of the complainant Society who was in need of financial assistance for his personal use, and therefore, he approached to the complainant and applied for loan. The complainant advanced Rs.25,000/- to the accused at the rate of 21 % per annum. The accused agreed to repay the loan amount in monthly installments, but he did not deposit the outstanding amounts, therefore, on demand of outstanding amount, he received a cheque bearing No. 170976 dated 17.11.2005 of Rs.39,155/- which was outstanding in discharge of legal and enforceable debt. The complainant presented the said cheque in its account at Washim Urban Co-operative Bank, Risod. On 21.11.2005, the said cheque returned with an endorsement "fund insufficient", therefore, the complainant has issued the notice on 03.12.2005.

After receipt of the notice on 05.12.2005, the accused has not repaid the amount, therefore the complainant constrained to file a complaint. The learned Judicial Magistrate First Class taken cognizance of the complaint and issued the process against the accused.

5. In support of the complaint, complainant examined his authorized person Mr. Gajanan Shankarrao Jadhao and also placed reliance on documentary evidence i.e. account extract Exhs.27 and 28, Notice Exh.30, copy of Agreement of loan Exhs.24 and 25, copy of promissory note dated 07.03.2001 Exh.26, Postal Receipt and acknowledgment Exhs.31 and 32, copy of the cheque Exh.33, Copy of Pay Slip Exh.34, Bank Return Memo Exhs.35 and 36, copy of resolution Exhs.37 and 38 and complainant's letter to Municipal Counsel, Risod Exh.42. After appreciating the evidence of the complainant and the documents, the learned Judicial Magistrate First Class, Risod, held the accused guilty and convicted him by sentencing simple imprisonment of one month and fine of Rs.30,000/-, in default, simple imprisonment for seven days.

6. The said conviction was challenged by the accused before the learned Sessions Judge, Washim vide Criminal Appeal No.13/2008. After appreciating the evidence, the learned Sessions Judge acquitted the accused and hence this appeal.

7. Heard learned Counsel Mr. Paliwal for the appellant who submitted that there was legal and enforceable debt and the cheque was issued in discharge of legal and enforceable debt. The accused has obtained the loan amount and not repaid the same and issued the cheque dated 17.11.2005 of Rs.39,155/- against the outstanding amount. The said cheque was dishonoured, hence the complainant has filed the complaint. The evidence of the authorized person of the complainant's Society shows there was legal and enforceable debt and the cheque was issued while discharging the liability of legal and enforceable debt. Thus, the ingredients of the offence are fulfilled. The accused has not rebutted the presumption however, the learned Sessions Judge has not considered the same and wrongly acquitted the accused. The Judgment and order of acquittal is perverse and liable to be set aside.

8. Per contra, learned Counsel Mr. Gandhi for the respondent No.1/accused submitted that while obtaining the loan blank cheques were obtained and the said cheques were misused by the complainant Co-operative Credit Society. As per the evidence of the complainant, the cheque was issued on 17.11.2005 of Rs.39,155/- however, on the date of the issuance of the cheque the outstanding amount was not Rs.39,155/- but it was Rs.30,000/-. The account extract Exhs.27 and 28 shows

that on the day of issuance of the chqeue, the balance amount was not Rs.39,155/- and this fact is also admitted by the witnesses of the complainant. From the said admission, it reveals that the blank cheque obtained by the complainant at the time of disbursing the loan amount was misused and this false complaint is filed.

9. After hearing both sides and on perusal of the evidence on record as well as the impugned Judgment of the learned trial Court as well as the learned Appellate Court, there is no dispute as to the fact that the complainant is a Credit Society and the authorized person of the said Credit Society was Gajanan Shankarrao Jadhao. The copy of the agreement of loan Exhs.24 and 25 and Promissory Note Exh.26 show the accused has obtained the loan. Exhs.27 and 28 are the extracts of the account. As far as the obtaining of the loan is concerned, it is an admitted position. The only disputed fact is that whether the amount of Rs.39,155/- was outstanding on the day of issuance of cheque. The accused has admitted that some amount was outstanding from him, but he disputed that the cheque issued was filled by him and it was towards the outstanding amount. Thus, the entire issue revolves around whether the cheque was issued towards the legally enforceable liability. The evidence on record i.e. the extract for the period of 01.04.2003 to

23.01.2006 has not been proved. The extract Exhibit 27 shows that an amount of Rs.30,994/- was outstanding as on 01.03.2003. The extract Exhibit 28 shows that on 31.03.2006 an amount of Rs.34,297/- was due. The accused is a clerk in the Municipality. The letter was issued by the appellant - Credit Society for deducting the amount from his salary. The entries in the loan account of the accused disclosed that there were some payments towards the repayment of the loan by transfer as per Exhibit 42. The outstanding amount was shown as Rs.26,608/- as on June 2007. Admittedly, the burden on the accused is only to show on the basis of preponderance of probability that there was no legal and enforceable debt. The complainant was under the obligation to establish the fact that on the day of issuance of cheque the amount of Rs.39,155/- was outstanding. The defence of the accused is that the blank cheques were obtained while disbursing the loan amount. Admittedly, the documentary evidence nowhere proves that an amount of Rs.39,155/- was outstanding as on 17.11.2005. The witness of the complainant has also admitted the same. Considering the defence of the accused that the cheque was issued towards the security, then it would not be within the purview of Section 138 of the N.I. Act. Thus, the evidence on record sufficiently shows that on the day of issuance of the cheque, the amount of Rs.39,155/- was not due from the accused and therefore, the learned Appellate Court has considered the various decisions and observed that the accused has rebutted the presumption through the cross-examination to show that there was no legal and enforceable debt on the day of issuance of the cheque and acquitted the accused.

10. As far as the appeals against acquittal are concerned, it is well settled that the cardinal principle of law is that in appeal against acquittal if other view is possible then also the Appellate Court cannot substitute its own view by reversing acquittal into conviction unless findings of the trial Court are perverse and contrary to material on record. It is also well settled that while exercising appellate powers, especially while dealing with appeals against acquittal, cardinal principle kept in mind is that there is a presumption of innocence in favour of the accused unless the accused is proved guilty. The presumption continues and finally culminates into a fact when the case ends in acquittal the possibility of two views in a criminal case is not an extraordinary phenomenon. A fact cannot lose sight of the same. In the light of the above said principle, if the evidence of the complainant in the trial Court is considered, the only evidence is in the nature of oral evidence. The documentary evidence i.e. account extract nowhere shows that on the day of issuance of the cheque the amount of Rs.39,155/- was due against the

accused. Even the witness of the complainant has admitted the said fact and stated that the amount of Rs.26,608/- was due from the accused. Thus, considering the evidence adduced by the complainant, admittedly it falls short to prove that the cheque was issued against the legal and enforceable debt. The learned Sessions Judge has considered all these aspects and by applying the principle and on appreciating the evidence held that the complainant failed to establish that the cheque was issued towards legal and enforceable debt. The said finding was recorded on appreciating the evidence on the basis of sifting and weighing of material facts, acquitted the accused. The view taken by the learned Sessions Court is a possible view and therefore, no interference in the Judgment impugned in the appeal is called for.

11. In the light of the above, as the appeal is devoid of merits and liable to be dismissed and the same is dismissed.

(URMILA JOSHI-PHALKE, J.)

Sarkate.