



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

CRIMINAL APPEAL NO. 352 OF 2008

Hinganghat Nagri Sahakari Path Sanstha
Maryadit, Hinganghat, Through its
Manager Shri Keshav Narayan
Kumbhare, aged about 45 years,
R/o Hinganghat, Dist. Wardha.

... Appellant

Versus

Malti Narayan Telang
Aged major, Occ. Business,
R/o. Sant Tukdoji Ward, Hinganghat,
Tah. Hinganghat,
District – Wardha

... Respondent

Mr. Girish Kandhari, Advocate h/f Dr. Anjan De, Advocate for appellant.
Mr. Prasad Dharaskar, Advocate h/f Mr. K.S. Narwade, Advocate for respondent.

CORAM : M.M. NERLIKAR, J.
DATE : 19.11.2025.

ORAL JUDGMENT:

Heard.

(2) The appeal is already admitted vide order dated 02.09.2010. Heard finally by consent of both the learned counsel for the parties.

(3) In the present appeal, the appellant is challenging the

judgment and order dated 08.10.2007 passed by the learned Judicial Magistrate First Class, Hinganghat. The respondent herein was acquitted of the offence punishable under Section 138 of the Negotiable Instrument Act, 1881.

(4) The respondent had availed loan of Rs.1,00,000/- on 04.09.1998, in the repayment of which she had given a Cheque No.038287 dated 14.05.1999 of Rs.1,32,842/- drawn on Chandrapur Gadchiroli Gramin Bank Branch, Chimur, which was presented by the appellant. The said cheque was dishonoured vide cheque return memorandum dated 24.01.2000 and it was returned back to the appellant-society. On 08.02.2000, appellant -society had issued a legal notice demanding the amount of cheque, the respondent received information of the said notice on 14.02.2000, to which reply was received on 22.02.2000 admitting that she borrowed Rs.1,00,000/- on 04.09.1998 at interest of 21 % p.a. and amount due was Rs.1,32,842. However, as the amount was not paid, the appellant society filed criminal proceeding as per Summary Criminal Case No.808/2000. The plea of respondent was recorded, she pleaded not guilty to it. After appreciating the evidence the Trial Court acquitted the respondent on 08.10.2007.

(5) The learned counsel appearing for the appellant submits

that the trial Court has miserably failed to take into consideration the evidence of witness, who was examined by the Path Sanstha. The cheques were not given as security, however, on the failure of arriving at the settlement, the cheques were issued. Therefore, it cannot be said that, it is not a legally enforceable debt as when the cheque was presented, it dishonoured. The trial Court has miserably failed to take into consideration the evidence of CW i.e. complainant's witness in its true perspective. Lastly, he submits that the trial Court has not considered the case of the complainant properly and wrongly acquitted the respondent.

(6) On the other hand, the learned counsel appearing for respondent submits that, admittedly, the respondent had availed the loan of Rs.1,00,000/- from the Path Santha. However, she has repaid the entire amount to the appellant. As a security, the Path Sanstha while granting loan, had taken the documents along with blank cheques. Though the respondent has paid the entire amount still the appellant has tried to encash the cheque which was given to them as a security deposit and therefore, it cannot be termed as a legally enforceable debt. He further submits that Path Sanstha after payment of entire dues has issued 'no due certificate' at Article 'B', not only that the receipts were also produced on record which are exhibited. This fact was admitted by the complainant's witness in his evidence. The

presumption provided under Section 139 of the Negotiable Instrument Act, has been successfully rebutted and the onus has been shifted on the complainant and he has failed to prove that there is a legally enforceable debt. He lastly submits that the cheque which was given for repayment of loan obtained by the accused from the complainant was dishonoured and a Criminal Case No.2635/1999 has been filed wherein respondent was acquitted and thereafter, this case was filed.

(7) Upon consideration of the rival submissions, it is not in dispute that the respondent has availed loan of Rs.1,00,000/- from the Path Sanstha. In order to support the case of the complainant, the complainant has examined one witness namely Pramod Madhukarrao Pohekar, who has deposed at Exhibit 29, in cross-examination, he has admitted that 'no due certificate' at Article 'B' was issued by the Path Sanstha and there is stamp on the said 'no due certificate'. He further admits that there is also signature of the Manager of the Path Sanstha on the said 'no due certificate'.

(8) It is necessary to mention at this juncture that on 12.01.2000, the entire amount was paid and on the same day, 'no due certificate' at Article 'B' was issued.

(9) Further, there is also 'No Objection Certificate', at Exhibit

44 issued by the Path Sanstha. Article 'C' which is cash receipt also shows that on 12.01.2000, the respondent has paid the entire dues. The question would be if the entire dues are paid on 12.01.2000, then why the Path Sanstha has presented cheque, the answer is not coming from the mouth of Pramod Madhukarrao Pohekar. It appears that Path Sanstha has taken undue advantage of the blank cheques, which can be gathered from the facts of the present case. Therefore, even if the cheque is dishonoured, it cannot be said that the offence under Section 138 is committed by the respondent, when there is no legally enforceable debt against the respondent.

(10) In this view of the matter, there is no evidence against the respondent so far as the legally enforceable debt is concerned.

(11) Considering the above facts and circumstances, there is no merit in the appeal and the appeal is accordingly dismissed.

[M.M. Nerlikar, J.]

Prity