



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

CRIMINAL APPEAL NO. 353 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

Sanjay s/o Sudhakar Rao Nagarwar
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) **Admit.** 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 taken a loan of Rs.1,00,000/- from appellant which is a credit society on 29.02.2000 for construction of house and he had given a Cheque bearing No.106201 dated 12.01.2000 of Rs.1,32,344/- drawn on Wardha District Co-operative Bank, Hinganghat Branch, Hinganghat, towards the repayment of the loan. On the basis of whereby no objection certificate was obtained from the appellant. On an earlier date respondent had issued a cheque dated 13.01.1999 which was dishonoured against which criminal proceeding bearing No.1356/1999 was filed in which the respondent was acquitted when said cheque was presented for encashment on 19.01.2001 the same dishonoured for the reason of 'insufficient funds'. Pursuant to same, legal notice under Section 138 of the Negotiable Instrument Act was sent to the respondent on 25.01.2000. When the respondent failed to pay the amount within the stipulated time, Summary Criminal Case No.652/2000 came to be filed wherein after appreciating the evidence the learned Trial Court acquitted the accused.

(5) The learned counsel appearing for the appellant submits

that, the learned Trial Court has acquitted the respondent on two grounds - the first ground is that the cheques were issued as a security towards the loan of Rs.1,00,000/- given to the respondent by the appellant, and therefore, it is not a legally enforceable debt. The second ground on which the respondent was acquitted, is that the demand notice is not served on the accused/respondent.

(6) 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 was dishonoured. It has come in the evidence that Demand Notice was issued to the respondent however, he has refused to accept the same and therefore, 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.

(7) 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, he 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 'NOC' not only that, the receipts were also produced on record as 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 submits that the notice which was issued to the respondent was never served and this was duly proved by the respondent from the deposition of the complainant's witness. Not only that the appellant has failed to examine any person from the postal office in order to show that the notice was served on the respondent. It was further pointed out that the cheque in the present case was issued against the satisfaction of outstanding amount in Criminal Case No.1356/1999 wherein both the parties had filed a pursis for not prosecuting the case, but due to absence of respondent, the said pursis was taken back. As per the pursis, the accused paid Rs.1,32,344/- to the

appellant-society and it was stated that no loan amount was outstanding. In pursuance to which, the accused was acquitted on 13.03.2007 and subsequently, the Summary Criminal Case No.652/2000 was filed.

(8) 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 26, in cross-examination, he has admitted that 'NOC' certificate was issued by the Path Sanstha and there is stamp on the said 'NOC' at Exhibit 49. He further admits that there is also signature of the Manager of the Path Sanstha on the said 'NOC'.

(9) It is necessary to mention at this juncture that on 12.01.2000, the entire amount was paid and on the same day, 'NOC' was issued. Not only that, it was shown that on 12.01.2000 cheque was issued by the accused for payment of the loan amount. Therefore, considering this fact 'NOC' at Exhibit 49, was issued stating that all the dues have been paid by respondent.

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

53 issued by the Path Sanstha. Exhibit 50, 51 and 53, which are cash receipts 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 on 12.01.2000, 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.

(11) So far as the demand notice issued by appellant is concerned, it was disputed that the said demand notice was received by the respondent as the endorsement shows 'returned' on 04.02.2000. As per the appellant, the respondent has avoided receiving the notice and therefore, it was returned back with the endorsement of 'returned'. It is for the complainant to prove that the notice was duly served. From the evidence it appears that the demand notice was not duly served on the respondent which is one of the important ingredients under Section 138 of the Negotiable Instrument Act. The appellant has miserably failed to prove the factum of service of notice to the respondent.

(12) In this view of the matter, there is no evidence against the respondent so far as the legally enforceable debt is concerned and so also the appellant failed to prove that the demand notice was served on the respondent.

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

[M.M. Nerlikar, J.]

Prity