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

CRIMINAL APPEAL NO. 316 OF 2007

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 Sudhakarrao 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) The appeal has already been admitted vide order dated 26.07.2007. 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 13.03.2007 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 appellant is a credit co-operative society dealing in sanction and disbursement of loan. The respondent had availed a loan of Rs.,1,00,000/- from the appellant and in part repayment had given a cheque dated 13.03.1999 of Rs.60,000/- drawn on Wardha District Central Co-operative Bank, Wardha Branch at Hinganghat. When the cheque was presented for encashment, the said cheque was dishonoured for want of sufficient funds on 13.03.1999. Pursuant to above, on 23.03.1999 appellant - society issued a legal notice demanding the amount of cheque which was allegedly received by respondent on 25.03.1999. As the said amount was not paid within the stipulated time the appellant society filed criminal proceedings i.e. Summary Criminal Case No.1356/1999. After appreciating the evidence the Trial Court acquitted the accused for the offence punishable under Section 138 of the Negotiable Instrument Act.

(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. 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.

(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, he has repaid the entire amount to the appellant and 'no due certificate' at Exhibit 92, was issued, 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 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.

(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 48-A, in cross-examination, he has admitted that no due certificate 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' 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 'no due certificate' at Exhibit 92, was issued stating that all the dues have been paid by respondent.

(9) Further, there is also 'No Objection Certificate', at Exhibit 91 issued by the Path Sanstha. Article 'B' 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. Therefore, 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) 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 31.03.1999. As per the appellant, the respondent has avoided to receive 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.

(11) 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.

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

[M.M. Nerlikar, J.]

Prity