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

CRIMINAL APPEAL NO. 715 OF 2008

...

Nishant Sahakari Gramin Pat
Purwatha Sanstha Ltd, Akola,
Branch at Karanja,
Through its Branch Mamager,
Shri P.M. Khatle,
Aged 40 yrs, R/o Karanja, District Washim.

... **APPELLANT**

- - V E R S U S - -

Bankatlal s/o Kashinath Amdabadkar,
Aged 50 yrs, Occu Cultivator,
R/o Ladegoan, Tahsil Karanja,
District Washim.

... **RESPONDENT**

Ms. D.R. Bhoyar, Advocate h/f Mr. A.P. Tathod, Advocate for the Appellant.

Ms. K.E. Meshram, Advocate h/f Mr. R.Darda, Advocate for the Respondent.

CORAM : M.M. NERLIKAR, J.

DATE : OCTOBER 16, 2025.

ORAL JUDGMENT :

Heard the learned counsel for both the parties.

2. **Admit.**

3. The present appeal is filed against the judgment and order dated 12/09/2008 passed by the learned Judicial Magistrate First Class, Karanja, in Summary Criminal Case No. 161/2005, whereby the complaint filed by the appellant under Section 138 of the Negotiable Instruments Act, 1881, came to be dismissed, resulting in acquittal of the respondent.

4. Brief facts of the case are that:

The appellant is a registered co-operative society engaged in extending loans and accepting deposits. On 17/07/2001, the respondent availed a personal loan of

Rs.50,000/- from the appellant after executing necessary documents. As the respondent failed to repay the amount, the appellant made repeated demands for the same. Eventually, on 11/12/2004, the respondent issued a cheque bearing No. 002525, drawn on Janta Commercial Cooperative Bank, Karanja Branch, for an amount of Rs. 93,189/- towards the discharge of the alleged outstanding dues. Upon presentation, the said cheque was dishonoured due to "insufficient funds." Thereafter, the appellant sent a legal notice to the respondent on 17/12/2004 demanding payment within 15 days, but the respondent neither replied to the notice nor paid the amount. Consequently, the appellant filed a complaint under Section 138 of the Negotiable Instruments Act, 1881. The Trial Court issued process, and charges were framed, the respondent pleaded not guilty and claimed that the cheque was given as a security towards the loan. During the trial, the appellant produced evidence including the cheque, notices, and other documents, while the respondent examined witnesses in his defense. The learned Magistrate dismissed the complaint on the ground that the cheque amount was not legally recoverable as it exceeded the actual loan amount. The appellant now challenges the said order by way of the appeal.

5. In order to prove the case, the complainant has examined himself by filing affidavit at Exh.-16, and placed on record various documents including the cheque (Exh. 23), bank memo (Exh. 24), notice dated 17/12/2004 (Exh. 25), postal receipt (Exh. 26), U.P.C. certificate (Exh. 27), postal envelope (Exh. 28), copy of original notice (Exh.-29), promissory note (Exh. 30) and other relevant documents. The respondent examined three witnesses in defense.

6. I have heard the learned counsel for the complainant / appellant and the learned counsel for the respondent. The learned counsel for the appellant submits that the Pat Sanstha had disbursed a loan amount of Rs. 50,000/- to the accused/respondent on 17/07/2001. However, the respondent failed to repay the loan as agreed. On 11/12/2004, the respondent issued Cheque No.002525 for an amount of Rs. 93,189/- towards repayment of the outstanding loan installments. It is further submitted that the said cheque was issued in discharge of lawful debts and liabilities. The learned counsel also submits that on behalf of the Pat Sanstha, Mr. Khatle, the complainant, was examined and specifically deposed that the cheque was issued by the accused in discharge of a legally enforceable debt. She further states that, it is an admitted fact that the loan of Rs. 50,000/- was disbursed by the complainant–Pat Sanstha to the respondent on 17/07/2001. It is also admitted that the signature on the cheque (Exh.-23) belongs to the accused. It is also an admitted fact that the cheque was returned unpaid with the endorsement "insufficient funds." The statutory demand notice was duly served upon the respondent is also an admitted fact. Despite receipt of the notice, the accused/respondent failed to repay the cheque amount, and therefore, the case was instituted under Section 138 of the Negotiable Instruments Act. The learned counsel further submits that, upon proving the aforementioned facts, the presumption under Section 139 of the Act operates in favour of the complainant, and the accused has failed to rebut the said presumption by adducing the evidence.

7. On the other hand, the learned counsel for the respondent submits that the Trial Court has duly considered all the relevant facts and circumstances of the case. He further contends that the amount reflected in the cheque was not legally recoverable from the respondent, as the claim was barred by limitation. It is also submitted that the cross-examination of the complainant brings out material contradictions and admissions which are sufficient to discredit the complainant's case. In light of this, the learned counsel prays for dismissal of the present appeal, submitting that no interference with the well-reasoned judgment of the Trial Court is warranted.

8. Upon consideration of the rival submissions, it is not in dispute that the respondent/accused had availed a loan of Rs. 50,000/- on 17/07/2001. The important question that arises is whether the cheque for Rs. 93,189/- was issued by the respondent towards the repayment of the said loan amount or not. From the evidence brought on record, it has emerged during the cross-examination that the complainant-Pat Sanstha charged interest at the rate of 18% per annum. As per the material placed on record, it appears that the loan was availed on 17/07/2001 amounting to Rs.50,000/- and the cheque was issued on 11/12/2004. While considering this fact, the Trial Court has taken much pains in calculating the rate of interest minutely. From every angle the Trial Court has considered the case of the complainant and tried to find out whether the cheque amount of Rs.93,189/- is said to be in discharge of the loan amount, however, after considering from every angle, the

Trial Court found that the amount mentioned in the cheque, i.e., Rs.93,189/- is not tallying with the actual calculations done by the Court.

9. After going through the evidence on record, I am also of the view that the cheque amount, i.e., Rs.93,189/- was an imaginary figure quoted by the Sanstha, and therefore, it cannot be said to be a legally enforceable debt. When the very foundation is shattered, then under such circumstances, it is very difficult to accept the case of the appellant, and therefore, it cannot be said that the cheque issued by the respondent to the Pat Sanstha was for the discharge of debt or liability. Further, presumption under Section 139 is not automatically raised unless the basic facts are proved, therefore, considering the entire evidence on record and after going through the judgement, and on re-appreciation of the evidence, in my opinion, the Trial Court has not committed any illegality, perversity and there is no error; findings of the Trial Court are based on sound reasoning, and therefore, I decline to interfere in the finding of fact tendered by the Trial Court. Hence, the following order:-

ORDER

The Appeal is **dismissed**.

[M. M. NERLIKAR, J]