Rekha Sharad Ushir vs Saptashrungi Mahila Nagari Sahkari ... on 26 March, 2025

Author: Abhay S. Oka

Bench: Abhay S. Oka

REPORTABLE

2025 INSC 399

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 724 OF 2025

REKHA SHARAD USHIR …APPELLANT

versus

SAPTASHRUNGI MAHILA NAGARI
SAHKARI PATSANSTA LTD. …RESPONDENT

JUDGMENT

ABHAY S. OKA, J.

FACTUAL ASPECTS

1. The Appellant is the accused in Criminal Case No. 648 of 2016 pending before the Judicial Magistrate First Class, Kalwan (for short, 'the JMFC'). The complaint was filed by the respondent before the JMFC alleging the commission of an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the NI Act') on the basis of the dishonour of a cheque, which was allegedly issued by the appellant in favour of the respondent, a Credit Co-Operative Society.

2. It is alleged by the respondent that the appellant had obtained a loan of Rs. 3,50,000/- from the respondent on 3rd July 2006 through an overdraft facility. At the time of obtaining the loan, she issued two security cheques bearing Nos. 010721 and 010722. Due to a default in repayment, the respondent deposited the first cheque (No.010721) drawn on 10th February 2007 for the amount of Rs.3,75,976/-, which was dishonoured. Following a legal demand notice from the respondent's advocate, the respondent filed Criminal Case No. 135 of 2007 under Section 138 of the NI Act on 4th April 2007. The appellant paid the cheque amount before the JMFC, Kalwan Court, on 23rd September 2016, following which the respondent withdrew the prosecution, and the appellant was

acquitted on the same date.

3. In the interregnum, the appellant was allegedly granted another loan of Rs. 11,97,000/- on 25th July 2008 by the respondent. Due to an alleged default in repayment of the loan amount and interest accrued thereon, the respondent deposited the second cheque (No. 010722) drawn on 3rd October 2016 for the amount of Rs. 27,27,460/- which was dishonoured on 14th October 2016. The respondent issued a legal notice dated 11th November 2016, claiming that the cheque was issued towards repayment of an overdraft facility of Rs.11,97,000/- allegedly taken by the appellant on 25th July 2008.

4. While disputing the case made out in the demand notice, through her advocate's reply on 28th November 2016, the appellant sought the supply of the loan documents from the respondent to enable her to give a reply to the statutory notice. By writing another letter through her advocate on 13th December 2016, she informed the advocate for the respondent that the documents had not been supplied to her.

5. The respondent filed the complaint bearing Criminal Case No. 648 of 2016 before JMFC, Kalwan, alleging the commission of an offence punishable under Section 138 of the NI Act on 15th December 2016 in relation to dishonoured Cheque No.010722. The JMFC issued the process on 2nd March 2017. Challenging the issuance of process, the appellant filed a Criminal Writ Petition No. 2316 of 2017 before the Hon'ble High Court of Bombay, which was dismissed by the impugned order dated 18th December 2023. The High Court found no infirmities in the order of the JMFC issuing process and held that the contentions raised by the appellant could only be decided at trial.

SUBMISSIONS

6. The learned counsel appearing for the appellant submitted that she had already paid the first loan of Rs. 3,88,077/- on 30th March 2007, and the said loan account was subsequently closed. Yet, the respondent chose to prosecute her wrongly and was forced to repay the entire loan again as she did not have the loan statement then and could not prove her earlier payment. It was further contended that the respondent, despite having full knowledge of the repayment, maliciously misused the second security cheque (No. 010722) to initiate false proceedings by depositing the said cheque within 10 days after the appellant had paid the entire amount pertaining to the first loan. The learned counsel emphasized that such an act amounted to a clear abuse of the process of law. The learned counsel pointed out that while filing the complaint, the respondent suppressed the most material letters dated 28th November 2016 and 13th December 2016 addressed by the advocate for the appellant to the advocate for the respondent and the fact that the copies of the documents were demanded by the appellant were not furnished by the respondent. Therefore, the complaint is an abuse of the process of law.

7. The learned counsel appearing for the respondent submitted that there exists a presumption under Section 139 of the NI Act in favour of the cheque holder. Thus, it shall be presumed that the respondent received the cheque for the discharge of debt by the appellant, and this presumption can only be rebutted by adducing evidence during the trial. He contended that the complaint contained

all the essential ingredients and that there was no suppression of material facts warranting dismissal of the complaint. No provision of Chapter XVII of the NI Act mandates the supply of the documents relied upon in the demand notice. Additionally, he submitted that the replies of the appellant to the respondent dated 15th November 2016 and 28th November 2016 were not material for establishing a prima facie case for issuing the process. The counsel for the respondent also filed an additional counter-affidavit, producing a letter dated 29th November 2016, written by the appellant to the respondent, seeking copies of the statements of various loan accounts maintained by her and her husband, which were duly provided. It was submitted that the appellant acknowledged receipt of the same by affixing her signature thereon. It was submitted that the appellant failed to disclose the same in the memorandum of her Special Leave Petition.

CONSIDERATION OF SUBMISSIONS

8. Section 138 of the NI Act reads thus:

> "138. Dishonour of cheque for insufficiency, etc., of funds in the account.—Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or with both:
>
> Provided that nothing contained in this section shall apply unless—
>
> (a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;
>
> (b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and
>
> (c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice.

Explanation.—For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability."

9. A court of the Judicial Magistrate can take cognizance of an offence punishable under Section 138 of the NI Act based on a complaint filed under Section 200 of the Code of Criminal Procedure, 1973 (for short, 'the CrPC'). The corresponding provision under the Bhartiya Nagarik Suraksha Sanhita, 2023 (for short, 'the BNSS') is Section 223. After a complaint is filed under Section 200 of the CrPC, the learned Magistrate is duty-bound to examine the complainant on oath and witnesses, if any, present and reduce the substance of such examination into writing. What is reduced into writing is required to be signed by the complainant and witnesses, if any.

10. Recording the complainant's statement on oath under Section 200 of the CrPC is not an empty formality. The object of recording the complainant's statement and witnesses, if any, is to ascertain the truth. The learned Magistrate is duty-bound to put questions to the complainant to elicit the truth. The examination is necessary to enable the Court to satisfy itself whether there are sufficient grounds to proceed against the accused. After considering the complaint, the documents produced along with the complaint, and the statements of the complainant and witnesses, if any, the learned Magistrate has to apply his mind to ascertain whether there is sufficient ground for proceeding against the accused. If he is satisfied that there is sufficient ground to proceed against the accused, then the learned Magistrate has to issue a process in terms of sub-Section (1) of Section 204 of the CrPC. The corresponding provision under the BNSS is Section 227. Setting criminal law in motion is a serious matter. The accused faces serious consequences in the sense that he has to defend himself in the trial.

11. It is settled law that a litigant who, while filing proceedings in the court, suppresses material facts or makes a false statement, cannot seek justice from the court. The facts suppressed must be material and relevant to the controversy, which may have a bearing on the decision making. Cases of those litigants who have no regard for the truth and those who indulge in suppressing material facts need to be thrown out of the court. In paragraph 5 of the decision of this Court in the case of S.P. Chengalvaraya Naidu v. Jagannath & Ors.1, it is held thus:

> "5. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax- evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right 1 (1994) 1 SCC 1 to approach the court. He can be summarily thrown out at any stage of the litigation." (emphasis added)

12. Section 138 of the NI Act has three conditions incorporated in clauses (a) to (c) of the proviso. Firstly, the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier. Secondly, if a cheque is returned by the bank unpaid, the payee or the holder in due course must make a demand for payment of the amount of money covered by the cheque by issuing a notice in writing within 30 days of receipt of information from the bank regarding the return of the cheque as unpaid. The third condition is that the drawer of the cheque must fail to make payment of the amount covered by the cheque within 15 days of the receipt of the notice.

13. In the present case, a statutory notice under Section 138 of the NI Act was issued by the advocate for the respondent on 11th November 2016 to the appellant. The notice proceeds on the footing that the respondent, a Co-operative Credit Society, is providing financial assistance to its members and is also carrying on banking business. The allegation in the notice served to the appellant is that the appellant was a member of the credit society and had taken an overdraft facility from the respondent in the sum of Rs.11,97,000/-. Paragraph 1 of the notice specifically relies upon the fact that the appellant has executed necessary documents and that the appellant has agreed and acknowledged to make repayment of the amount advanced with interest. Thereafter, the notice proceeds to describe how the cheque issued by the appellant in the sum of Rs.27,27,460/- was returned unpaid.

14. Within a few days of receiving the notice, on 28th November 2016, the appellant replied to the notice through her advocate in which it was mentioned that after receiving the notice, a written application had been made by the applicant to the respondent calling upon the respondent to provide documents relied upon in the notice. The appellant stated that the said documents had not been provided and that she would reply to the demand notice after receiving the documents. In the reply, she denied the claim of the respondent. On 13th December 2016, the appellant's advocate addressed a letter to the respondent reiterating that though the appellant had demanded the documents from the respondent, the same had not been provided. Thereafter, the respondent filed a complaint on 15th December 2016 before JMFC, Kalwan. The statement of the respondent-complainant in the form of an affidavit was filed on the same day.

15. It is pertinent to note that in the counter to the present appeal, the respondent has not denied the receipt of the letters dated 28th November 2016 and 13th December 2016. The complaint and affidavit in support of the complaint only refer to the notice dated 15th November 2016 issued by the advocate for the appellant to the respondent. What is stated in the complaint reads thus:

> "……
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> [D] The notice sent on the first address has been received on 15.11.2016. However, from the second address, envelope has been returned on 15.11.2016 with the postal remark as 'left'." However, the respondent suppressed the letters dated 28th November 2016 and 13th December 2016 in the complaint and its statement on oath. Now, by filing an additional affidavit, it is contended by the respondent that certain documents were supplied to the appellant. A copy of the application dated 29th

> November 2016, submitted by the appellant to the respondent's manager, is placed on record seeking loan account statements.
>
> Accordingly, certain account statements bearing the appellant's signature have been produced. The signatures on the account statements do not bear any date.

16. It is pertinent to note that in the notice under Section 138 of the NI Act, in paragraph 1, the respondent specifically relied upon documents executed by the appellant and the acknowledgment of the loan made by the appellant. By a reply dated 28th November 2016, the appellant informed the respondent that by filing a written application, the appellant had demanded certain documents, which had not been provided. What is pertinent to note is that the respondent does not deny the receipt of the reply dated 28th November 2016. No reply was sent by the respondent pointing out that the documents were supplied. Even in the letter dated 13th December 2016, the appellant made the same grievance regarding the non-supply of the documents relied upon in the demand notice. Before filing the complaint, the respondent failed to respond to the said letter.

17. A counter to this appeal was filed by the respondent on 7th August 2024, in which it is not even a case made out that requisite documents, as demanded by the appellant, were handed over to her on 29th November 2016. A case was belatedly made out for the first time by filing an additional affidavit on 9th January 2025 that statements of loan account sought by the appellant were furnished to her and her signature appears on the statements. As stated earlier, though it is claimed that the appellant’s signatures appear on the said documents acknowledging the receipt, no date is mentioned below the signatures. In the additional affidavit, the respondent alleged that by a letter dated 29th November 2016, the appellant had called upon the respondent to provide the loan account statements of the six loan accounts mentioned in the said letter. Therefore, the stand taken in January 2025 that the statement of accounts was supplied on 29th November 2016 is clearly an afterthought.

18. The fact remains that in the complaint, the respondent has suppressed the reply dated 28th November 2016 and the letter dated 13th December 2016 sent by the appellant’s advocate. These two documents have also been suppressed in the statement on oath. The respondent made out a false case that the appellant did not reply to the demand notice. Moreover, the case that the documents as demanded were supplied is not pleaded in the complaint and statement under Section 200 of CrPC.

19. If these two letters were disclosed in the complaint, the learned Magistrate while recording the statement under Section 200 of CrPC, could have always questioned the respondent on the supply of documents to the appellant. What is important is that in the reply dated 28th November 2016, the appellant had reserved her right to give a reply to the demand notice after receiving the documents. It was the respondent's duty to supply documents to the appellant or her advocate to enable the appellant to properly reply to the demand notice. At least, the inspection of documents could have been provided to the appellant. After noticing the fact that notwithstanding service of two letters written by the appellant, relied upon documents were not provided to the appellant, the learned Magistrate could have dismissed the complaint by exercising power under Section 203 of CrPC, as

the appellant could not have replied to the statutory notice without looking at the documents relied upon.

20. Thus, this was a case where very material documents in the form of two letters addressed by the appellant were suppressed in the complaint and the statement on oath under Section 200. In the statement on oath, the respondent-complainant vaguely referred to a 'false notice reply', but a copy of the reply was not produced by the respondent along with the complaint.

21. While filing a complaint under Section 200 of CrPC and recording his statement on oath in support of the complaint, as the complainant suppresses material facts and documents, he cannot be allowed to set criminal law in motion based on the complaint. Setting criminal law in motion by suppressing material facts and documents is nothing but an abuse of the process of law.

22. Hence, the High Court ought to have interfered and quashed the complaint. Accordingly, the impugned order of the High Court is set aside. The complaint bearing S.C. No. 648 of 2016 pending in the court of the learned Judicial Magistrate First Class at Kalwan and the order of cognizance dated 2nd March 2017 are hereby quashed and set aside.

23. We make it clear that the other remedies of the respondent to file proceedings for recovery of the amount allegedly due and payable by the appellant in accordance with law will remain open.

24. The appeal is, accordingly, allowed.

.....J. (Abhay S. Oka) .....J. (Ujjal Bhuyan) New Delhi;

March 26, 2025