

Shakuntala

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO.1 OF 2014

1. VPK URBAN COOPERATIVE SOCIETY LTD., with Head Office at Mardol, Ponda-Goa, duly represented herein by its Field Assistant, Mr. Vishnu Shankar Gaude, son of Shankar Gaude, aged 38 years, Indian national, married, resident of House No. 98, Bhomwada, Padeli, Sattari-Goa. ... APPELLANT

Versus

1. SHRI SIDHESHWAR JANARDHAN SURLAKAR, major in age, Indian National, resident of House No. 48, Surla, Tarmatha, Sankhali, Bicholi-Goa.

2. STATE OF GOA, through the Public Prosecutor, High Court, Panaji-Goa ... RESPONDENTS

Mr. Parikshit Sawant, learned Counsel for the Appellant.

Mr. Sidhesh Shet, learned Counsel for Respondent No. 1.

Mr. Nikhil Vaze, learned Additional Public Prosecutor for Respondent No. 2.

CORAM: BHARAT P. DESHPANDE, J.

RESERVED ON: 05th February, 2024

PRONOUNCED ON: 12th February, 2024

JUDGEMENT

1. Heard Mr. Parikshit Sawant, learned Counsel for the Appellant, Mr. Sidhesh Shet, learned Counsel for Respondent

No. 1 and Mr. Nikhil Vaze, learned Additional Public Prosecutor for Respondent No. 2.

2. By this appeal, the Appellant/Complainant is challenging the impugned Judgment dated 31.07.2013 by which the learned Magistrate acquitted the Accused/Respondent No. 1 for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

3. The Appellant/Complainant filed the complaint under Section 138 of the Negotiable Instruments Act, 1881 claiming therein that it is a Society registered under the Maharashtra Co-operative Societies Act and carrying on its business having its branches including the one at Kurti Ponda, Goa. The Society is engaged in financial business by accepting deposits and advancing loans to its members. The Complainant was represented by its Field Assistant, duly authorised to file such complaint. It further claimed that Respondent No. 1/Accused being one of its members obtained loan of Rs.6,00,000/-(Rupees Six Lakhs only) with agreement to repay it in instalments together with interest as per the terms and conditions imposed in the loan agreement and loan account number MVH/351. The Respondent No. 1/Accused

committed defaults in paying the instalments together with interest and over due amount remained unpaid. The Respondent/ Accused then issued a cheque bearing No. 014423 dated 30.10.2012 in favour of the Complainant amounting to Rs. 3,36,000/- (Rupees Three Lakhs Thirty Six Thousand only) towards part payment of the outstanding loan amount. Complainant presented such cheque for realization, however it was returned unpaid on 02.11.2012. Complainant then issued a legal notice dated 20.11.2012 calling upon the Respondent No. 1/Accused to pay the amount mentioned in the cheque within 15 days from the date of receipt of such notice. Though the Respondent No. 1/Accused received such notice, he neither paid the amount nor replied to the said notice. Accordingly, a complaint was filed with the learned Magistrate.

4. Upon verification of the complaint, process was issued to the Accused who appeared and contested the matter. Substance of accusation was explained to the Accused on 02.03.2013 upon which Accused pleaded not guilty and claimed to be tried.

5. The Complainant through its authorised Officer stepped into the witness box and filed affidavit in evidence together with documents. The statement of the Accused was then recorded

under section 313 of Criminal Procedure Code(Cr.P.C.) wherein the Respondent No. 1/Accused denied most of the allegation found in the evidence. Finally, he answered to the Question no. 12 as under:-

“I had given 20 blank cheques to the Complainant only signed by me”.

6. The learned Magistrate upon considering the material on record answered point no. 1 and 3 as disproved. While holding such points against the Appellant/Complainant, the Magistrate observed that presumption under Section 139 of the Negotiable Instruments Act stands rebutted, which has been challenged in the present petition.

7. Mr. Sawant appearing for the Appellants would submit that the findings of the learned Judicial Magistrate First Class are perverse and against the settled propositions of Law. The observations in the impugned Order clearly goes to show that the learned Magistrate gave importance to irrelevant aspects when in fact there is no dispute from the Accused that he signed the blank cheques and that he obtained loan from the Complainant. The statement of account produced on record clearly goes to show that

an amount more than Rs. 5,00,000/-(Rupees Five Lakhs only) was shown as outstanding as on the date of issuance of cheque.

8. He would submit that entire case of the complainant is based on the documents which were produced and proved, however, the learned Magistrate gave more importance to the oral testimony by ignoring settled propositions that the documents/evidence cannot be discarded only on the basis of oral testimony. He would submit that the presumption under section 139 of Negotiable Instruments Act was not at all rebutted by the Respondent No. 1/Accused and thus the learned Magistrate was duty bound to convict the Respondent no. 1.

9. Per Contra, Mr. Sidhesh Shet appearing for the Respondent No. 1 would submit that the cross examination of the Authorised Officer clearly destroyed the case of the Complainant and he failed to justify the amount which was outstanding as on date of issuance of cheque. He would therefore submit that though the documents were placed on record, oral evidence is contrary to such documents and thus no interference is necessary.

10. Rival contentions fall for determination as under:-

(i) Whether Respondent No. 1 succeeded in rebutting presumption under Section 139 of Negotiable Act?

11. Answer is in the negative for the following reasons:-

12. Parties are herein after referred to as Complainant and Accused for the sake of convenience.

13. The Complainant is a society dealing with business of finance thereby accepting deposits and giving loans to its members. The Complainant is a registered society and having license to carry out such business which has not been disputed at all. In the complaint itself, statement is made that the Accused is a member of the Society who obtained a loan of Rs.6,00,000/-(Rupees Six Lakhs only) which was returnable with instalments together with interests.

14. In order to substantiate such contentions, the Complainant along with its Complaint produced list of documents which include loan agreement and demand promissory note dated 21.02.2008, loan account statement dated 15.11.2012. These two documents were produced through PW-1 which are at exhibit -18 colly and 20 colly. The deposition of PW-1 together with affidavit show that the Accused is their member who obtained loan of Rs. 6,00,000/-

(Rupees Six Lakhs only). A perusal of demand promissory note dated 21.02.2008, the name of the Accused along with others appeared who jointly and severally promised to pay Rs. 6,00,000/- (Rupees Six Lakhs only) on demand with an interest at the rate of 15% per annum. The Loan Agreement at exhibit C-18 colls further proves that Accused was granted loan of Rs. Rs.6,00,000/- (Rupees Six Lakhs only) with the condition to repay it in 60 instalments each of Rs.14,700/-(Rupees Fourteen Thousand Seven Hundred only) together with interest at the rate of 15% per annum. These documents were exhibited in evidence and the same are not at all disputed in the cross examination of PW-1.

15. The entire cross examination nowhere disputes execution of loan agreement and the demand promissory note by the Accused and availing of such loan. It is also brought on record during cross examination that while taking the loan by the Accused, he hypothecates his Truck/vehicle. The loan was disbursed to the Accused on the undertaking that he hypothecated the Truck with the Complainant Society. There is a clear statement by PW-1 and that too in the cross examination that the amount of loan was disbursed through the account of the Accused. He also denied the

suggestion that he failed to produce sufficient documents to show the liability of the Accused. The cross examination of this witness is basically on the aspect of instalments and the amount paid by the Accused in such instalments. The specific suggestion was put to this witness which he denied and it reads thus:-

“It is not true to suggest that on 30.10.2012 the accused is not liable to pay Rs.3,36,000/-(Rupees Three Lakhs Thirty Six Thousand only) to the Complainant and that the Complainant has done illegal entries in the statement of account”.

16. PW-1 during further cross examination has categorically stated that outstanding amount includes loan, installment and other charges, however, he was unable to disclose or bifurcate such interest and other charges during further cross examination. PW-1 then categorically stated that Accused is liable to pay cheque amount as on 30.10.2012 based on ledger Account produced at exhibit C-20 colly.

17. The disputed cheque is produced which show the signature of the Accused together with date and amount which has not been disputed at all. The cheque return memo shows that the cheque

was returned for funds insufficient. The demand notice was issued to the Accused dated 20.11.2012 wherein all the details of the cheque, loan and the outstanding amount is mentioned. The Accused was asked to pay the amount mentioned in the Cheque within 15 days from the date of receipt of such notice. The said notice was addressed to the Accused and forwarded by a registered post with acknowledgement due. The Postal Department handed over such notice to the Accused and the acknowledgment is produced at exhibit C-17 colly.

18. There is no dispute raised by the Accused that such notice was never received by him. Besides, the notice is addressed to the registered address of the Accused. The mandate of Section 138 of the Negotiable Instruments Act is to send notice to the Accused on his registered address, which has been complied with by the Complainant. No defence has been raised about such notice. No reply was given by the Accused to such legal notice.

19. Important document is the loan personal ledger produced at exhibit 20 colly together with the certificate.

20. These documents clearly shows outstanding amount of Rs.5,13,498/- (Rupees Five Lakhs Thirteen Thousand Four

Hundred and Ninety Eight only) as on 30.09.2012. Thus, the cheque in question issued by the Accused on 30.10.2012 for Rs.3,36,000/- (Rupees Three Lakhs Thirty Six Thousand only) is certainly less than the amount outstanding shown in the ledger maintained by the Complainant. The certificate enclosed along with the ledger show that the entries in such ledger are correct and as per record maintained by the Society.

21. The Accused while answering questions asked to him under Section 313 Cr.P.C. admitted that the Complainant is a Society engaged in financial business accepting fixed deposits and advancing loans. However, he disputed/denied all other contentions but finally claimed that he handed over 20 blank cheques to the Complainant. This clearly goes to show that the defence raised by the Accused is only an eye wash and that there is no serious dispute or denial with regard to obtaining loan and agreeing to repay on instalments. The signature on the cheque is also not disputed. There is absolutely no defence raised by the Accused on receipt of legal notice issued by the Complainant. Thus once the signature on the cheque is admitted, the Court is duty bound to presume in favour of the Complainant that the cheque

was issued for legally enforceable debt.

22. In the case of **Bir Singh V/s Mukesh Kumar, 2019 4 SCC 197**, the Apex Court considering the statutory presumption under Section 139 of the Negotiable Instruments Act and observed that on meaningful reading of the provision of the Negotiable Instruments Act, it makes amply clear that the person who signs the cheque and makes it over to the payee, remains liable himself unless he adduces evidence to rebut the presumption that the Cheque had been issued for payment of debt or in discharge of liability. It is immaterial that the cheque may have been held in by any person other than the drawer, if the cheque is duly signed by the Drawer. If the cheque is otherwise valid penal provision of the Section 138 would be attracted. The signed blank cheques involuntarily presented to some payee towards some payment and the payee by filling up the amount and other particulars would not itself invalidate the cheque and the onus would still be on the Accused to prove by adducing evidence that the cheque was not issued towards liability.

23. It is now a well settled proposition of law that once the signature on the cheque is admitted by the Accused, the Court is

duty bound to raise presumption in favour of the Complainant under Section 139 of the Negotiable Instruments Act. It is then for the Accused to rebut such presumption though by preponderance of probabilities there by showing it through evidence of the Complainant or by leading evidence. It is also well settled that such presumption cannot be rebutted only on the basis of suggestion or showing some discrepancies in the testimonies of the complainant.

24. In the present matter the documentary evidence placed on record clearly proves that the Accused obtained loan of Rs.6,00,000/-(Rupees Six Lakhs only) with an undertaking to repay it in 60 instalments together with an interest at the rate of 15% per annum. The demand promissory note was also executed by the Accused in favour of the Complainant Society to that effect. The ledger personal account maintained by the society in its normal business activity would show that the amount of Rs.5,13,498/-(Rupees Five Lakhs Thirteen Thousand Four Hundred and Ninety Eight only) is shown as outstanding as on 30.09.2012. There is no other material to show that prior to the date of cheque i.e. 30.10.2012 any repayment was made by the Accused. Thus the amount outstanding in the loan ledger account

is much more than the one mentioned in the cheque.

25. This documentary evidence is sufficient enough to strengthen the case of the Complainant. Such material cannot be disbelieved only because representative of the Society was unable to give the bifurcation of the amount or the fact that he paid some instalments prior to the date of the cheque. The learned Magistrate has completely ignored the fact that repayment was with 15% interest. Therefore, even if some amount was paid, the amount outstanding shown in the ledger account and that too maintained during their regular business activities could not have been disbelieved. Apart from some discrepancies found in the deposition of PW1, there is absolutely no material to show that the Accused succeeded in rebutting presumption under Section 139 of the Negotiable Instruments Act.

26. The findings of the learned Magistrate are therefore against the settled Propositions of Law and hence needs to be considered as perverse.

27. In sum and substance the Accused admitted his signature on the cheque. The Complainant established that the loan was sanctioned and availed by the Accused to the tune of Rs.6,00,000/-

(Rupees Six Lakhs only) and the amount mentioned in the cheque is certainly less than the outstanding amount shown in the ledger book. Thus, there was absolutely no material in favour of the Accused to claim the rebuttal evidence. The presumption stands in favour of the Complainant and accordingly, the only option with the learned Magistrate was to hold Accused guilty. By ignoring the settled proposition and the documentary evidence and giving unnecessary importance to oral testimony the learned magistrate committed an error in acquitting the Accused.

28. The Appeal succeeds for the reasons disclosed above. The Impugned order is accordingly quashed and set aside. The Accused Respondent No. 1 herein is found guilty for the offences punishable under section 138 of Negotiable Instruments Act.

29. The matter is kept for hearing the Accused on point of sentence.

BHARAT P. DESHPANDE, J.