
(2014) 09 BOM CK 0138
In the Bombay High Court
Case No : Criminal Appeal No. 32 of 2011

HDFC Bank Ltd.

APPELLANT

Vs

Amresh Madhukar Sawant

RESPONDENT

Date of Decision : 03-09-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 420, 467, 468, 471

Citation : (2014) 09 BOM CK 0138

Hon'ble Judges : U.V. Bakre, J

Bench : Single Bench

Advocate : M. Viegas, Advocate for the Appellant; C. Fonseca, Advocate for the Respondent

Final Decision : Dismissed

Judgement

U.V. Bakre, J.—Heard Mr. Viegas, learned counsel for the appellant and Mr. C. Fonseca, learned counsel for the respondent.

2. This appeal is directed against the judgment and order dated 30/7/2010 passed by learned Judicial Magistrate, First Class at Panaji ("J.M.F.C.", for short) in Other Act Criminal Case No. 358/2008/B.

3. The appellant was the complainant in the said criminal case whereas respondent no.1 was the accused therein. Parties shall be hereinafter be referred to as per their status in the said case.

4. The complainant had filed the complaint u/s 138 of the Negotiable Instruments Act, 1881 ("the Act") against the accused alleging that three cheques bearing nos. 009996 dated 1/10/2007, 009997 dated 1/11/2007 and 009998 dated 1/12/2007, all drawn on the Centurion Bank of Punjab Ltd., Mapusa Branch, Goa, for Rs. 15,266/- (fifteen thousand two hundred and sixty six only) each, were issued by the accused towards discharge of part of his loan

liability and when these cheques were presented for payment they were returned dishonoured for "insufficient funds" on 28/2/2008. The complainant issued a legal notice dated 25/3/2008 to the accused, which was returned with an endorsement "unclaimed return to sender". Since the accused failed to make the payment of the said amount, said complaint was filed which came to be registered as Other Act Criminal Case No. 358/2008/B.

5. The complainant examined its manager and authorised officer, namely Shri Ajit Kappen as PW1. Statement of the accused was recorded u/s 313 of Cr. P.C. The accused examined himself as DW1 and one Mr. Nandkishore Arolkar, the Assistant Director of Transport at Mapusa, as DW2.

6. Upon consideration of the entire evidence on record, learned J.M.F.C. observed that there was material to hold that the accused had given the cheques in blank at the time of taking the loan. It was found that PW1, in his cross examination, had stated that cheques had to be deposited during each month when the monthly installment was due and if the cheque in respect of the installment for a continuous period of 4 to 5 months was dishonoured, the bank would write to the borrower to either pay the said installment or to close the loan account and if the customer would not respond even after a legal notice, they would file proceedings u/s 138 of the Negotiable Instruments Act. In the present case, the J.M.F.C. found that all the three cheques which were respectively dated 1/10/2007, 1/11/2007 and 1/12/2007 were presented on the same day i.e. on 28/2/2008. The learned J.M.F.C. held that a perusal of the NOC dated 8/12/2007 produced by the Assistant Director of Transport brought out that it was issued by the authorised signatory of the HDFC Bank and confirming that loan agreement entered between the HDFC bank Limited and the accused had been terminated and requesting RTO, Mapusa to remove hypothecation of the bank on the said vehicle. The J.M.F.C. also found that the notice of termination of the agreement of Hire/Purchase/Lease/hypothecation, at Exhibit 54-colly showed that the agreement of hypothecation entered into between the complainant and the accused stood terminated. It was observed by learned J.M.F.C. that the complainant even after coming to know about the said documents for the first time on 12/4/2010, did not take steps, till date, to register the FIR to the effect that the documents at Exhibit 54-colly were forged by the accused. It was therefore, held that the material on record brought out a probability in favour of the accused that the agreement was terminated and that the vehicle was sold by the complainant much prior to the presentation of the cheques for payment by the complainant. The accused was, therefore, acquitted.

7. Mr. Viegas, learned counsel appearing on behalf of the complainant invited my attention to the Form 35 pertaining to the termination of the agreement and NOC dated 8/12/2007 and contended that seal on the same is not of the complainant. He also invited my attention to the cross-examination of DW1 wherein a suggestion has been put to the effect that the said documents produced by the RTO were forged. The learned counsel submitted that perusal of the impugned

judgment reveals that the accused was acquitted only because the complainant had not taken steps to register the FIR to the effect that the documents at Exhibit 54-colly were forged by the accused. He submitted that the complainant through Mr. Ravindra Kulkarni, who is Assistant Manager of the complainant, had lodged FIR no. 218/2010 dated 26/7/2010 against the accused for offences under Sections 467, 468, 471 and 420 of IPC. He invited my attention to the affidavit filed by Ravindra Kulkarni, in this Appeal, wherein he has stated that the manager of the Panaji branch of the appellant namely Ajit Kappen informed him just on the previous day about the Judgment of acquittal passed by the learned J.M.F.C. on the basis of the forms produced by RTO. He submitted that therefore, the matter is required to be remanded to the J.M.F.C. for taking additional evidence of the said Assistant Manager Shri Ravindra Kulkarni for production of the said FIR as also for other additional evidence to prove the forgery.

8. Mr. Fonseca, learned counsel appearing on behalf of respondent no.1, while supporting the impugned Judgment and Order, submitted that PW1 has specifically deposed that the cheques had to be deposited each month, in spite of which, in the present case, all three cheques of different months were presented for payment on the same day i.e. on 28/2/2008 and that the ink in which the cheques were signed and the date was written was different from the ink in which the other contents of the cheques were written. He, therefore, submitted that it was clear from the evidence that the accused had given blank cheques to the complainant at the time of taking loan. The learned counsel invited my attention to the NOC dated 8/12/2007, given by the complainant, which is part of Exhibit 54-colly, which clearly confirms that the loan agreement was terminated and that RTO as well as insurance company was requested to remove the hypothecation of the complainant bank on the said vehicle. He also drew my attention to Form No. 35 which confirms the same fact. He submitted that this was done on 8/12/2007 but the cheques were presented subsequently on 28/2/2008 when in fact there was no liability at all since agreement itself was terminated. He further submitted that no purpose would be served by remanding the matter to the J.M.F.C. and by allowing the complainant to produce FIR dated 26/07/2010, since there is no evidence at all to establish that the seals on the said documents are not of the appellant. He submitted that FIR in itself cannot prove guilt of the accused. He pointed out that said FIR was registered on 26/7/2010 and more than four years have passed but there is nothing on record to show that any further things happened after registration of the FIR. He, therefore, urged that the impugned judgment and order is in accordance with the settled principles of law and no interference therefore is called for.

9. I have gone through the original records and proceedings. I have considered the arguments advanced by the learned counsel for the parties.

10. The short point for my determination is whether the three cheques which are subject matter of the said case were issued towards legally enforceable debt or liability? My answer is in the negative.

11. As has been rightly contended by learned counsel for the accused, PW1, Shri Ajit Kappen, Deputy Manager of the complainant has clearly stated in his cross-examination that the accused had given 48 cheques towards payment of monthly installment and they were to be deposited during every month when monthly installment was due. However, in the present case, all the three cheques, respectively dated 1/10/2007, 1/11/2007 and 1/12/2007 were presented for payment on the same day i.e. 28/02/2008. Again, the difference in ink in the writings in said cheques, as observed by the learned J.M.F.C., is also there. There is great force in the contention of the accused that blank cheques were taken from the accused at the time of signing the agreement.

12. The accused had examined himself as DW1 and stated that complainant had informed him that bank would repossess the vehicle and sell it to a new purchaser and thereafter the loan agreement would be terminated after the recovery of the loan amount. The accused stated that he agreed to the proposal from the bank and handed over the vehicle bearing no. GA-01-Z-3971 to the authorised person of the complainant and thereafter the loan account was closed and the complainant bank issued the NOC for transfer of the vehicle in the name of new purchaser. This affidavit-in-evidence was filed by the accused on 12/04/2010. The Assistant Director of Transport at Mapusa was summoned and PW2, Shri Nandkishore Arolkar, the Assistant Director of Transport at Mapusa, deposed that the documents of the vehicle bearing No. GA-01-Z- 3971 were registered in their office on 6/2/2006 and that the vehicle was hypothecated to the HDFC bank. He further stated that the NOC from the bank to which the vehicle was hypothecated was required for the purpose of transfer of the vehicle. He stated that his office issued NOC for transfer of the vehicle in favour of G. Manju of Shimoga on 4/1/2008. He produced Forms no. 28 and 29 along with the NOC issued by the HDFC Bank and the Forms no. 30 and 35 in respect of the vehicle. All these documents are at Exhibit 54-colly. Form no. 35 clearly states that the complainant bank had terminated the agreement of hypothecation and the NOC of the complainant dated 8/12/2007 further confirms the said fact and proves that there was no liability of the accused towards the complainant as on the date on which cheques were presented for payment. The said documents bear the signature of the authorised signatory of the complainant with its seal. Agreement was terminated on or before 8/12/2007 whereas cheques were presented on 28/02/2008. Merely because a suggestion was put to the accused that the said documents were forged, that cannot help the complainant. In fact, the complainant had come to know about the said documents at Exhibit 54-colly on 12/4/2010. However, FIR no. 218/2010 was filed only on 26/7/2010. After filing of said FIR, now more than four years have passed and there is nothing on record to show as to what progress has been done in respect of the said FIR. As rightly contended by the learned Counsel for the accused, no purpose would be served by remanding the case to the Trial Judge for production of said FIR on record, since FIR in itself cannot prove anything. The complainant cannot otherwise be allowed to adduce further evidence in order to fill loopholes in the

case, by examination of Ravindra Kulkarni when the authorised signatory namely PW1 has already been examined. The material on record, as rightly held by the Trial Judge brings out probability in favour of the accused that the agreement was terminated and, therefore, there was no liability towards the complainant. The accused has been therefore rightly acquitted. No interference with the impugned judgment and order is called for.

13. In the result, the appeal is dismissed.