
(2011) 02 BOM CK 0163
In the Bombay High Court
Case No : Criminal Appeal No. 474 of 2000

Ramesh Bhimraj Panhale

APPELLANT

Vs

Kishor S. Chobe and The State of Maharashtra

RESPONDENT

Date of Decision : 21-02-2011

Acts Referred:

Limitation Act, 1963 — Article 19
Negotiable Instruments Act, 1881 (NI) — Section 138, 139
Penal Code, 1860 (IPC) — Section 420

Citation : (2011) 02 BOM CK 0163

Hon'ble Judges : S.S. Shinde, J

Bench : Single Bench

Advocate : S.K. Shinde, holding for V.H. Dighe, for the Appellant; S.T. Shelke and V.D. Rakh, Assistant Public Prosecutor, for the Respondent

Judgement

S.S. Shinde, J.—Heard learned Counsel appearing for the Appellant and learned Counsel appearing for the Respondent at length. Present criminal appeal is filed by the original complainant taking exception to the judgment and order passed by the Judicial Magistrate First Class, Rahuri in S.T.C. No. 254/1996 dated 04th September, 1999, thereby acquitting the Respondent/original accused.

2. The facts of the case can be stated as under:

The complainant alleged in his complaint that the accused Kishor S. Chobe was carrying construction and contractor business and due to one, Anil Sarvadkar accused was conversant and acquainted with the accused. Thus, accused used to take hand loan amounts from the complainant and repay it. It is alleged that the accused came to the complainant on 08.02.1991 and demanded hand loan of Rs. 60,000/ for the period of five years. So the complainant withdrawn his balance amount from the bank and paid Rs. 60,000/ in cash to the accused.

3. It is further case of the complainant that, after period of five years, the complainant demanded amount of Rs. 60,000/ from the accused. Accused was not having sufficient cash with him so he issued cheque of Rs. 60,000/ drawn

upon the Union Bank of India, Branch Gholewadi, Tq. Sangamner on 20.02.1996. The complainant presented and deposited that cheque for payment. But concerned bank dishonored the same with passing memo. Thus, for funds insufficient the cheque returned on 10.04.1996. Then the complainant informed to the accused about the dishonour of the cheque and non payment of it. The accused refused to pay the cheque amount to the complainant. The complainant issued him notice on 18.04.1996, and demanded amount, costs of the dishonour cheque as well as notice charges. So it is alleged that, the cheque issued by the accused to the complainant for payment of hand loan amount was dishonored and so the accused was also issued with the notice. But he failed to pay the amount. Hence the accused has committed offence punishable u/s 420 of Indian Penal Code and u/s ec. 138 of the Negotiable Instruments Act.

4. It appears from the record that the process u/s 138 came to be issued against the accused on 05.07.1996. In view of the process notice cum summons issued to the accused who appeared before the Court. The particulars of the offence of issuing cheque of Rs. 60,000/ to the complainant for payment of hand loan on 20.02.1996 and dishonoring the same by the concerned payee bank and also issuing notice to him by the complainant and failed to pay the cheque payment are read over and explained to the accused in the Marathi language. The accused pleaded not guilty to it and claimed to be tried. The defence of the accused is of total denials on the submissions that he has not committed any offence and he has already paid Rs. 35,000/ plus Rs. 20,000/ total Rs. 55,000/ before 20.11.1993. The complainant compelled him to hand over blank cheques and so he only signed this cheque and handed over to the complainant and who afterwards filled up blank columns of the cheque written the amount on it and so whatever the amount written is not due towards him. In order to harass the accused complainant has filed this false case against him.

5. In order to prove the allegations against the accused, the complainant Ramesh Bhimraj Panhale deposed at Exhibit 30. So also produced the dishonored cheque, office copy of notice as well as examined the witness No. 2 Lalitkumar Fattelal Chaddha branch manager cum head cashier Ghulewadi branch Sangamner. The accused has examined defence witness No. 1 Gopinath Dashrath Dhonde servant of Union Bank of India, Pravaranagar at Exhibit 65 and who produced saving account extract of Mr. Ramesh Bhimraj Panhale at Exhibit 66. P.W. 2 is Anaji Rambhau Thorat clerk of Merchant Bank Sangamner deposed at Exhibit 77, who also produced verified copy of cheque dated 27.07.1995 and account statement of Bhimsashankar Ravba Chakor. D. W. 3 is Manohar Dhondiba Sarvadekar and P.W. 4 Bhimashankar Ravba Chakor deposed at Exhibit 80 and 81 respectively.

6. It appears that the Trial Court framed as many as two points for its determination and after recording the evidence of the complainant and one another witness P.W. 2 and the defence witnesses, came to the conclusion that the complainant failed to prove its case.

The counsel for the Appellant argued that amount of Rs. 60,000/ was given to

the Respondent as hand loan. Since the relations were friendly with the Respondent no any receipt or any agreement was entered between the parties. The counsel further invited my attention to the contents of the complaint and also deposition of the complainant before the Court and submitted that, an amount of Rs. 60,000/ was given. Since the amount was given for five years and same was not repaid after five years, two cheques were given by the Respondent of Rs. 60,000/ each to the complainant. According to the counsel for the complainant, the defence taken by the Respondent is that, against Rs. 60,000/ he has paid Rs. 89,000/ in cash is not proved. The complainant has denied any payment by the Respondent. The counsel also invited my attention to the evidence of P.W. 2 to show that the cheque presented in the bank was returned, since it was not honoured. P.W. 2 has stated in his evidence that such cheque was presented and same was dishonored for not having sufficient funds in the account of the Respondent.

The learned Counsel for the complainant further submitted that, if the evidence of defence witness is read in its entirety, it nowhere suggest that, the amount was paid by the Respondent to the complainant. Merely examining the witness who states that on 02.09.1991 an amount of Rs.32,749/ and on 01.12.1993 an amount of Rs. 20,000/ was deposited in the account of complainant cannot be read to suggest that amount is paid by the Respondent. He further submitted that, the evidence of other defence witnesses also does not inspired confidence. The learned Counsel further submitted that, since the hand loan was given in the year 1991 for five years. Said period of five years expired in 1996 and two cheques were given by the Respondent in that sense the Trial Court was not correct in recording that the debt is barred by limitation because no acknowledgment was obtained before expiry of the debt loan. The learned Counsel would submit that, this appeal may be allowed.

7. On the other hand, the learned Counsel for the Respondent relied on the reasons/findings recorded by the Trial Court and submitted that, if the transaction was of 1991 and two cheques are issued in 1996, in that case provision of Article 19 of the Limitation Act would be applicable if the debt is to be legally enforceable debt, then it should be recoverable within three years from the date of transaction. In the instant case, admittedly, the cheques are dated 20th February, 1996 and alleged transaction is in the year 1991. The counsel further submitted that, the defence witnesses have stated about repayment of the loan by the Respondent. The counsel for the Respondent invited my attention to the evidence of D.W. 4/Chakor who has stated in his evidence that, an amount of Rs. 34,200/ was paid to Mr. Panhale i. e. Rs. 15,000/ by issuing bearer cheque and remaining Rs. 19,200/ from FDR on the request of the Respondent. The counsel would submits that, the possible view has been taken by the Trial Court. Therefore, this Court may not interfere in the impugned judgment.

8. I have given due consideration to the rival submissions of the learned Counsel for the respective parties. The relevant point in the present matter is that, when

the complainant had given hand loan in the year 1991 of Rs. 60,000/ to the Respondent in that case as a security, if at all cheque is issued by the Respondent the cheque should have been issued in the year 1991. However, the case of the complainant is that, hand loan was given on 08.02.1991 and two cheques were issued by the Respondent on 20.02.1996. It is admitted position that, the complainant has not stated before the Court that hand loan of Rs. 60,000/ was given for five years. Though it is stated in the complaint by the complainant, however, same fact has not been stated before the Court. Therefore, the Trial Court was correct in holding that, if at all the complainant wanted to recover the legally enforceable debt from the Respondent, he should have initiated the proceedings within three years from the date of advancement of the loan. That apart the complainant himself has stated that two cheques were issued on 20.02.1996 of Rs. 1,20,000/. However, there is no foundation either in the complaint or in the deposition before the Court that, why complainant has accepted the cheque of Rs. 1,20,000/. There is no foundation either in the complaint or it has not been stated in the deposition before the Court with what understanding two cheques of Rs. 60,000/ each were given to the complainant. The complainant has admitted in his cross examination that one blank cheque was given by the Respondent to the Appellant. Though it is not specifically stated that, such cheque was given as a security against the transaction of hand loan. However, fact remains that, there is admission by the Respondent that, the Respondent had given blank cheque to the Appellant.

9. The Respondent in his defence has examined as many as four witnesses. The defence was taken by the Respondent that against the loan of Rs. 60,000/ he had repaid Rs. 89,000/ to the complainant to that effect the Respondent has brought on record the evidence of defence witnesses which would suggest that on particular dates amount was deposited by the complainant in his account and also to the effect that Rs. 34,200/ were given by the D.W. 4 to the complainant on the request of the Respondent as a part of repayment of the loan. The Respondent has rebutted the presumption u/s ec. 139 by taking possible defence and evidence of four witnesses strengthened the defence of the Respondent. Taking over all view of the matter, in my opinion, the Trial Court has taken the correct view in the matter. The possible view has been taken by the Trial Court. The evidence brought on record by the complainant does not inspire confidence so as to reverse the order of acquittal. It is well settled that, if the possible view is taken by the Trial Court, merely another view is possible cannot be a ground to reverse the order of acquittal. For all these reasons, I do not find any error in the impugned judgment and order of acquittal. Therefore, impugned judgment and order stands confirmed. Hence appeal is devoid of merit and same stands dismissed. The original record and proceedings be sent back to the Trial Court immediately. Bail bond if any stands cancelled.