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Received on 15/2/2007
Registered on 6/3/2007
Delivered on 23/8/2010
Duration 3 years 5 months 17 days

IN THE COURT OF METROPOLITAN MAGISTRATE,
44TH COURT, ANDHERI, MUMBAI.

(Before SHRI. D. M. TANDALE)
C. C. No. 669/SS/2007
EXHIBIT NO. 27

Ramjiraj Kshatriya Co-op. Society,
Having office at Karan complex,
Kurla Pipe Line road, Prabhatwadi,
Sakinaka, Mumbai-400 072
Mumbai 400 053. ... Complainant

V/s

Mr. Cinnagath Prasad Gangadharan
R/O. 7, Ramnath Mistra chawl, YT road,
Dahisar, (E) Mumbai- 400 068.
Juhu Mumbai 400 039. ... Accused

Appearance : Advocate of complainant : K. P. Mishra
: Advocate of accused : V. M. Talreja

OFFENCE PUNISHABLE
U/S.138 OF NEGOTIABLE
INSTRUMENT ACT 1881

METROPOLITAN MAGISTRATE
MUMBAI

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JUDGMENT

(Delivered on 23rd August 2010)

1 The Complainant filed present private case against accused u/s. 138 r/w 141 of N. I. Act.

2 On behalf of complainant society Shri Jayant Ganguly submitted that their society is co-operative credit registered society. They used to grant loan to their members. Accused is one of the member of their society. As per request of accused on 16/11/2000 their society granted loan amount of Rs. 1,50,000/- in favour of accused. On same day accused executed necessary document that means promissory note, hypothication agreement etc. in favour of their society. Accused issued alleged cheque bearing No. 092261 dt. 21/12/2006 for amount of Rs. 1,39,722/- drawn on Jankalyan Sahakari bank, branch Andheri (E) Mumbai to them for discharging legal liability of the said amount. Complainant submitted that they deposited this cheque in their account for clearance but this cheque become dishonoured and returned back with remark "insufficient funds". On 28.12.2006, they issued demand notice to accused through their counsel and requested for payment of cheque amount but of no use. So he filed present case against the accused u/s. 138 r/w 141 of N. I. Act.

3 On 6/03/2007 my predecessor passed order in respect of

process against accused thereafter summons was issued to accused. On 27/11/2007 accused appeared before court. The particulars of accusation were stated & explained. Accused not pleaded guilty and requested for trial.

4 In this case, complainant filed copy of resolution dt. 9/9/2006 Ex. 7, promissory note dt. 16/11/2000 Ex. 8, application for loan Ex. 9, hypothication agreement Ex. 10, Default payment notice dt. 29/6/2006 Ex. 11, alleged cheque bearing No. 092261 Ex.12, bank memo Ex. 13, copy of demand notice Ex. 14, A. D. Card, postal receipt Ex. 15 collectively, bank account extract Ex. 16, to prove their case.

5 Accused filed reply of demand notice dt. 17/1/2007, A. D. card Ex. 21 collectively, cheque record slip Ex. 22, Original passbook Ex. 23, payment receipt Ex. 24 collectively before court to corroborate his case.

6 After considering complainant's case, I determined following points and discussed it with findings and reasons as below :

POINTS	FINDINGS
i) Whether complainant proved that accused had issued cheque nos. 092261 for discharging of his legally enforceable liability ?	Affirmative

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POINTS	FINDINGS
ii) Whether the complainant proved that the aforesaid cheque was deposited for encashment within valid period and it returned for reason insufficiency of funds in account of drawer of cheque ?	Affirmative
iii) Whether the complainant proved that upon dishonorment of aforesaid cheque, they served demand notice upon the accused within specified period and accused failed to make payment ?	Affirmative

7 In this case, complainant examined himself on oath by filing affidavit Ex. 6. In affidavit complainant stated all the facts as per contents of complaint.

8 On 30/03/2010, the statement of accused u/s. 313 of Cr. P. C. was recorded. Accused denied the evidence of complainant. Accused examined himself by filing affidavit before court at Ex. 19 and submitted that he had not issued any alleged cheque dt. 21/12/2006 to complainant society for discharging legal liability for the amount of Rs. 1,39,722/-. Accused further submitted in affidavit that he applied for loan amount of Rs. 1,50,000/-. Complainant society also granted loan amount of Rs. 1,50,000/- but only transferred the amount of Rs. 1,00,205/-in his account as a loan amount. He had repaid the total amount of Rs. 1,66,780/- plus 1,01500/- to complainant. At the time of disbursing loan amount he issued eight blank signed cheques to

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complainant society as a security for this loan amount. Complainant misused one alleged cheque and filed false case against him. He also filed notice reply dt. 17/1/2007 alongwith original cheque book slip, his original passbook, receipt for payment of Rs. 2,68,280/- and statement of account before court to corroborate his case.

Heard Arguments of both side.

9 Council of accused filed following case laws to corroborate his case.

2008(1) BCR 432
2008 (2) BCR 65
2007 (2) BCR 403
2005 Cr. L. J. 4072
2010 BCR 891
2007 ALL MR 3073
(2006) 6 SCC 39

10 On behalf of complainant society Shri Jayant Ganguly submitted that their society is co-operative credit registered society. They used to grant loan to their members. Accused is one of the member of their society. As per request of accused on 16/11/2000 their society granted loan amount of Rs. 1,50,000/- in favour of accused. On same day accused executed necessary document that means promissory note, hypothication agreement etc. in favour of their society. Accused issued alleged cheque bearing No. 092261 dt.

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21/12/2006 for amount of Rs. 1,39,722/- drawn on Jankalyan Sahakari bank, branch Andheri (E) Mumbai to them for discharging legal liability of the said amount.

11 In this case it is admitted fact that complainant society is registered credit society. It is also admitted fact that complainant society used to give loan/finance to needy members of their society. It is also admitted fact that accused is one of the member of complainant society. It is also admitted fact that accused applied for loan towards complainant society and complainant society sanctioned the loan amount of Rs. 1,50,000/- in favour of accused. It is also admitted fact that on same day that means on 16/11/2000 accused executed necessary documents that means promissory note, loan agreement, hypothication agreement etc. in favour of complainant society. It is also admitted fact that due to default in payment complainant society filed one recovery application before cooperative society under section 101 of Co-op. Society Act. It is also admitted fact that the Registrar of Co-op. Society passed award against accused for amount of Rs. 1,59,000/-. It is also admitted fact that accused challenged this award before Divisional Joint Registrar and as per direction of Divisional Joint Registrar accused paid/deposited amount of Rs. 1,01500/- towards complainant. It is also admitted fact that the alleged cheque issued from the account of accused. It is also admitted fact that these alleged cheques bears the signature of accused.

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12 In this case the statement of accused has recorded under section 313 of Cr. P. C. Accused denied complainant's case.

13 In evidence accused submitted that in the year 2000 he approached towards complainant society for loan amount of Rs. 1,50,000/- and complainant society sanctioned the said amount in his favour. But complainant society only transferred the amount of Rs. 1,00,205/- in his account as a loan amount. It is pertinent to note that in present case complainant filed promissory note, agreement of loan, hypothication agreement which were executed by accused before court. After observing these documents it clearly show that complainant society gave loan amount of Rs. 1,50,000/- to accused and so accused executed these documents in favour of complainant society. In this case no doubt accused filed his passbook of Jankalyan Sahakari Bank before court at Ex. 23 and there is entry of Rs. 1,00,205/- dt. 18/11/2000 in credit side. But merely such entry in passbook has not to be considered that accused had not received sanctioned loan amount from complainant society. Also there is no evidence before court to show that accused received less amount than sanctioned loan amount and so accused made any written correspondence to complainant society and requested to correct figure of loan amount in promissory note, hypothication agreement, loan agreement etc. Also there is no evidence before court to show that accused filed any proceeding before

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higher authority and requested for correction in the figure of loan amount in his loan documents. So such circumstances has not to be considered that accused received only amount of Rs. 1,00,205/- as a loan from complainant society.

14 In evidence accused submitted that he repaid amount of Rs. 1,66,780/- plus 1,01500/-that means total amount of Rs. 2,69,280/- to complainant society. But complainant society has not shown this amount in his account Accused also produced several receipts before court at Ex. 24 collectively to corroborate his defence. It is pertinent to note that after observing these receipts it clearly show that these several receipts are for payment of service charges, share capital charges, interest loan amount etc. So merely filing of these receipts has not to be considered that accused paid total amount of Rs. 2,68,28o/- to complainant society as a repayment of this loan amount.

15 In evidence accused submitted that at the time of disbursement of loan amount that means in the year 2000 he issued eight alleged blank signed cheques to complainant society as a security for this loan amount. But complainant society filled up the contents of one alleged cheque and misused it. It is pertinent to note that there is no evidence before court to show that at the time of disbursement of loan amount that means in the year 2000 accused issued these blank

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signed cheques to complainant society as a security for loan amount. Also except mere word of accused there is no evidence before court to show that complainant filled up the contents of these alleged cheques and misused it. In this case no doubt accused filed his counter slip of cheque book before court at Ex. 22. Nut merely filing of counter slip of cheque book has not sufficient to consider that accused issued these alleged cheque to complainant society in the year 2000. Also there is no evidence before court to show that after repayment of full amount accused demanded his blank signed cheques from complainant society and complainant society avoided to return it and so accused filed any proceeding against complainant society. Also there is no evidence before court to show that accused informed concerned bank and requested to stop payment of this alleged cheque. It is pertinent to note that this alleged cheque has returned back with remark ' insufficient fund' and not returned back with remark ' stop payment'.

16 In evidence accused submitted that he issued this alleged cheque to complainant society in the year 2000 but thereafter in the year 2002 he closed his account. It is pertinent to note that there is no evidence before court to show that in the year 2002 accused closed his account. Also as per record this alleged cheque has returned back with remark ' insufficient funds' and not returned back with remark 'account closed'. So such circumstances has not to be considered that in

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the year 2000 accused issued these alleged blank signed cheques and in year 2002 accused closed his account.

17 In evidence accused submitted that he filed appeal against the award passed by Co-op. Registrar in recovery proceeding filed by complainant society before Divisional Joint Registrar and as per direction of Divisional Joint Registrar he deposited amount of Rs. 1,01500/-towards complainant society. As per record complainant also admitted that accused deposited amount of Rs. 1,01500/- towards them after filing of present case. So as per law accused is entitled to set off this amount from compensation amount.

18 In this case accused submitted that he paid full amount of this loan to complainant society and so he is not liable to pay cheque amount. It is pertinent to note that as per above discussion accused failed to prove that he repaid full amount of this loan to complainant society. Also as per record alleged has issued from the account of accused. Also as per record this alleged cheque bears the signature of accused. There is no evidence before court to show that complainant filled up the contents of this alleged cheque and misused it. So such circumstances has not to be considered that accused is not liable to pay cheque amount. After observing such type of circumstances, it clearly shows that the complainant proved that accused has issued cheque no.

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092261 for discharging his liability. So I give my findings in affirmative for point no.1.

19 In this case, complainant submitted that on 22/12/2006, they deposited this alleged cheque in their account for encashment but on 23/12/2006 this cheque become dishonored for reason, insufficient funds. Complainant filed bank memo at Ex-13 collectively before court to corroborate this fact. It is pertinent to note that as per above discussion accused failed to prove that he issued alleged blank signed cheques to complainant society and complainant society misused this alleged cheque by filing false case. After observing such circumstances, it clearly shows that complainant proved that the said cheque was deposited for encashment within valid period and it returned unpaid for reason that insufficient of funds on the account of accused. So I give my findings in affirmative for point no. 2.

20 In this case, complainant submitted that after dishonor of said alleged cheque on 28.12.2006, they issued demand notice to accused but accused failed to comply it. It is pertinent to note that as per record accused received this demand notice as well as accused gave notice reply but as per above discussion accused failed to prove that he repaid full amount of this loan to complainant society. After observing such circumstances, it clearly shows that the complainant

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proved that after dishonor of said cheque, they served demand notice on accused within stipulated period but accused failed to comply it. So I give my findings in affirmative for point no. 3.

21 In this case, no doubt counsel of accused cited various case laws but facts of present case and facts of citation are not identical.

22 After observing all these circumstances and facts, I come to the conclusion that complainant proved that accused had issued cheque no. 092261 to them for discharging his enforcible liability. Also as per evidence it clearly shows that complainant deposited this cheque in their account for encashment within valid period but this cheque become dishonored for reason of insufficient funds. Also as per evidence it clearly shows that after dishonor of this cheque, complainant issued legal demand notice to accused but accused failed to comply it so it clearly shows that complainant proved the ingredient of section 138 of N. I. Act.

23 Here, I stopped dictation and asked accused about sentence. Accused prayed for leniency.

24 After considering all these circumstances and facts, I consider that accused committed offence u/s. 138 of N. I. Act. Hence I

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pass following order.

ORDER

Accused Chinnagath Prasad Gangadharan is convicted u/s. 255(2) of Cr. P. C. of the offence punishable u/s. 138 of N. I. Act and he is sentenced to suffer S. I. for four months with payment of compensation amount of Rs.50,000/- (**Rupees fifty Thousand only**) to complainant in default simple imprisonment for 2 months.

Accused has liberty to release himself on cash bail of Rs. 5000/- during period to file appeal against sentence before appellate court.

Judgment delivered and dictated in open court.

The copy of judgment issued to accused on free of cost.

23.8.10

Dt. 23/8/2010

(D. M. Tandale)
Metropolitan Magistrate,
44th Court, Andheri, Mumbai.

tvv/-

B 5000/-
Paid in A/c I
vide R No. 0304498
dtd. 23/8/10

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