

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 77 OF 2015

Rahuri Taluka Doctors' and
Chemist Urban Co-operative
Credit Society Limited, Rahuri

...APPLICANT

VERSUS

1] The State of Maharashtra
and another

...RESPONDENTS

Mr. V.B.Jadhav, advocate holding for
Mr. A.V.Hon, Advocate for the Applicant
Mr. K.S.Patil, APP for Respondent no.1/State
Shri G.D.Tanpure, advocate for respondent no.2

**CORAM : INDIRA K. JAIN, J.
DATED : 22nd September, 2015**

O R D E R

1] This application under Section 378 (4) of the Code of Criminal Procedure is filed for grant of leave to appeal against the judgment and order of acquittal, passed by the learned Judicial Magistrate, First Class, Rahuri, District Ahmednagar on 27.11.2014

in S.T.C.No. 90 of 2009 for the offence punishable under Section 138 of the Negotiable Instruments Act.

2] Heard extensively the learned counsel for the parties.
Perused the original record.

3] The gist of the facts are required to be given here.

(i) Applicant is a registered cooperative society. It disburses loans to its members in accordance with the procedure. Sachin Vijay Jagdhane was a member of complainant/society. He approached the society and requested for loan of Rs.30,000/-. Complainant/society sanctioned loan of Rs.30,000/- to Sachin Jagdhane and disbursed the same to him on 9.12.2006. Respondent no.2 stood guarantor for the said loan. As Sachin Jagdhane did not repay the loan, Respondent no.2 issued cheque to the complainant on 7.12.2008. The said cheque was for Rs.20,000/-. On 11.12.2008, complainant presented the cheque to its banker for encashment. It was returned unpaid for, 'funds insufficient'. Complainant received the information regarding dishonour of cheque on 17.12.2008.

(ii) Then on 29.12.2008 legal notice was issued to

Respondent no.2/original accused. Despite receipt of notice, accused did not pay the amount of cheque and so complaint under Section 138 of the Negotiable Instruments Act came to be filed.

(iii) The particulars of offence were explained to the accused. Complainant adduced evidence of two witnesses CW 1 Pawar and CW 2 Raosaheb. Accused examined himself and one more witness Post Master Jadhav.

(iv) On hearing parties, the trial court came to the conclusion that cheque issued by the accused in favour of complainant/society was not in discharge of the legally enforceable debt or other liability and so offence under Section 138 of the Negotiable Instruments Act is not proved. Consequently, accused was acquitted.

4] Being aggrieved, complainant has come up before this court.

5] It can be seen from the record that one Dilip Kulkarni was having personal knowledge about the loan transaction of Sachin Jagdhane. From the evidence of CW 1 Pawar, it is apparent that he had no personal knowledge of the said loan transaction. CW 1

Pawar has admitted in unequivocal terms that Sachin Jagdhane has repaid the loan which he had taken from the complainant/society. Complainant wants to rely upon an extract of accounts (Exh.34) to show that loan of Rs.30,000/- was sanctioned to Sachin Jagdhane. The said extract of accounts does not bear signature of any responsible person of the complainant/society. For want of compliance of the provisions of Section 40 (1) of the Maharashtra Cooperative Societies Act, accounts extract (Exh.34) could not be taken into consideration by the trial court and that was rightly so.

6] It can be seen that various documents of the loan transaction were placed on record after statement of accused under Section 313 of the Code of Criminal Procedure was recorded. Those documents contain, loan demand application, promissory note, deed of guarantee, agreement, application for getting nominal membership of the complainant/society and notice (Exhs. 53 to 61). The documents on which complainant relied upon to prove the transaction of loan and the legally enforceable debt have not been duly proved. No evidence is adduced to show that Rs.20,000/- were due from the accused on 7.12.2008. As complainant/society has failed to prove that there was legally enforceable debt of Rs.20,000/- against the accused on 7.12.2008, trial court had no option but to

acquit the accused.

7] Needless to state that, in an application for leave to appeal, this court has to see whether there is an arguable case on merits or not and the minute scrutiny of evidence can be taken care of on merits if leave to appeal is to be granted.

8] On going through the testimonies of witnesses, documents produced on record, as indicated above, this court finds that the view taken by the trial court being a possible view, it would not be appropriate to grant leave to appeal in the matter.

9] For the aforesaid reasons, application stands rejected.

[INDIRA K. JAIN, J.]

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