IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 179 OF 2015

Parmanand Motor Vahutuk Sahakari
Sanstha Maryadit ..Applicant

Vs.

Bhanudas Gopinath Makone ..Respondent

....

Mr. D.A. Bide, Advocate for applicant.
Mr. Naseen R. Shaikh, Advocate for Respondent.

....

CORAM : M.T. JOSHI, J.
DATED : 18th NOVEMBER 2015

ORAL ORDER:

Heard.

2. Aggrieved by the acquittal of the respondent from the offence punishable under Section 138 of the Negotiable Instrument Act, the applicant wants to prefer an appeal and therefore the present application for leave to file appeal is filed.

3. In the present application, in short, the applicant/complainant's case is as under:-

The applicant-society is in the business of transportation. The respondent is a contractor and had agreed to supply workers to the applicant-society for cutting the sugarcane crops. Besides that, he also stood as guarantor for other members of the society i.e. his wife and brother, and as such, an amount of Rs.1,50,000/- each was advanced to the respondent as well as his wife and brother. However, the respondent and his relatives did not fulfill the contract. On several occasions, the applicant-society demanded return of advance. Ultimately, the present respondent issued the Cheque No. 242109 in question dated 18th December 2012 for an amount of Rs.7,15,564/- with interest. However, when the said cheque was presented, it was dishonored and therefore within prescribed period, notice was issued and complaint is filed.

4. The defence of the respondent was that, blank cheque was obtained by the applicant-society in the year 2003 merely as a security and the same is now misused after six years.

5. The learned Judicial Magistrate First Class found that the applicant-society could not explain as to how the interest of six

years is charged at one time. It was further found that the fact that the blank cheque was passed merely as a surety, is probable. It was held that the presumption that has arisen due to passing of cheque, has been rebutted.

6. Upon hearing both the sides, in my view, no fault can be found with the reasoning forwarded by the learned J.M.F.C. It is to be noted that for six years, the applicant remained silent and then it is the case of the applicant that after these six years, the present respondent voluntarily passed cheque wherein he has agreed to pay the interest.

7. The learned Counsel for the applicant submits that the term of charging of interest is incorporated in the agreement. As per the provisions of Section 42 and 43 of the Maharashtra Co-operative Societies Act, 1960, the co-operative societies are entitled to charge interest. In the view of the learned Judicial Magistrate First Class, the material question would be as to how in the year 2012, the respondent issued a cheque without having any

contemporary document. In this regard, it is to be noted that during the period 2006-2012, the appicant-society remained silent and thereafter without any contemporary document, the present respondent is alleged to have issued the cheque. Even the fact that the respondent has agreed to pay the interest of six years as calculated at one stroke by the applicant-society cannot be believed. In the circumstances, the learned Judicial Magistrate First Class has taken a reasonable and probable view on the basis of the record before him. Grant of leave to file an appeal would therefore be an exercise in futility. Hence the following order.

8. Application is rejected.

(M.T. JOSHI, J.)