FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

Office Notes, Office Memoranda of Coram, appearance, Court's orders or directions and Registrar's orders.	Court's or Judge's orders.

CRIMINAL APPLICATION NO. 861 OF 2015

JAI MALHAR NAGRI SAHAKARI PAT SANSTHA LTD
VERSUS
RAJESH S/O MALLIKAARJUN EKLARE
...
Advocate for Applicant : Mr. Thorat Chandrakant R.
Advocate for Respondent: Mr. Deepak D. Chaudhari.
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CORAM: T. V. NALAWADE, J.
DATED: 23rd JULY. 2015.

PER COURT:

1. The application is filed for grant of leave to file appeal against judgment and order of S.C.C. No.25 of 2011 which was pending in the Court of learned Judicial Magistrate, First Class, Aurangabad. The learned Judicial Magistrate, First Class has acquitted the Respondents of the offence punishable under section 138 of Negotiable Instruments Act.

2. Heard learned counsel for the Applicant. Some hearing was given to learned counsel for the Respondent. Applicant is a cooperative credit society. A

loan of Rs.50,000/- was given to the accused on 13th June, 2006. It is contended that on 30th November, 2010 there was outstanding amount of Rs.39,237/- and the accused was defaulter and so he gave the cheque. The cheque bounced. Statutory notice was given. The first statutory notice was returned with the remark "there was no complete address". The second statutory notice on different was address was returned unserved with the endorsement "the named person was not available in the village. Then the complaint came to be filed.

3. Before the learned J.M.F.C. the complainant produced aforesaid material and witnesses are examined. The learned J.M.F.C. has given acquittal on the following grounds:

(i) There was no service of the statutory notice on the accused.

(ii) The liability of the accused on as 30th November, 2010 was at the most of Rs.33,688/- and it was not of Rs.39,237/-, and

(iii) The cheque was probably given by way of security as in the payee column there is rubber stamp of credit cooperative society. The accused has admitted that he has signed the cheque. Provision of section 20 of the Negotiable Instruments Act need to be considered. But, there is no reference to this section. The transaction of loan is admitted by the accused. Though there are some discrepancies, this Court holds that leave can be granted to file appeal. So, the application is allowed.

4. Notice. It is waived by learned counsel for the Respondent, accused.

5. Call R. & P.

[T. V. NALAWADE, J.]

Dt.23/07/2015
ans/861