

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

CRIMINAL REVISION APPLICATION NO. 74 OF 2013

RAVER JANTA URBAN CO-OPERATIVE
CREDIT SOCIETY LTD. THR. ITS MANAGER.

V/S

SUNIL ARJUN JAWALE

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Mr. V.B.Patil, Advocate for Applicant.

Mr. Amol Sawant, Advocate for Respondent.

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CORAM : V.M.DESHPANDE, J.

DATE : 16th FEBRUARY, 2015

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PER COURT :

1. The proceedings for the offence punishable u/s 138 of the Negotiable Instruments Act, 1881 [hereinafter referred as the 'Act' for the sake of brevity] was initiated by the present applicant against the non applicant for dishonour of cheque. The learned Magistrate convicted the present non applicant and directed that he will suffer Simple Imprisonment for 3 months and to pay compensation of ₹ 1,29,200/-.

Against the said Judgment and order, Criminal Appeal No. 20/2005 was preferred before the learned Sessions Judge, Jalgaon. The learned Sessions Judge allowed the Appeal and set aside the Judgment and order of conviction.

2. Feeling aggrieved thereby, the complainant is before this Court. Undisputedly, loan was obtained by the present non applicant No. 1 and also by his wife in her individual name. From the perusal of the Complaint, it appears that there is nothing on record to show that the present non applicant stood as guarantor for the loan obtained by his wife.

3. According to the complaint, 2 cheques were issued by the present non applicant, (i) in respect of discharge of the loan amount for his wife and (ii) for clearing the loan taken by the present non applicant.

4. According to the learned counsel for the complainant/applicant, the cheque issued by the present non applicant in discharge of his legal liability to clear all dues, cheque was issued, was dishonoured and for that he

was already prosecuted.

5. The controversy involved in the present case is in respect of the cheque issued by the present non applicant for clearing the debt of the present applicant standing in the name of his wife.

6. Admittedly, the statutory notice which is required prior to the filing of the complaint for the offence punishable u/s 138 of the Act, though was issued in the name of the present non applicant, it was not served upon him. Exh. 25 is the acknowledgement placed on record, which clearly shows that the said notice was served upon the wife of the non applicant and not on the non applicant.

7. The learned counsel for the non applicant placed reliance on the authoritative pronouncement of Hon'ble Apex Court in **M.D.Thomas Vs. P.S. Jaleel and Anr., 2009 ALL SCR 2768**, which clearly held that the notice of demand served on the wife of the accused and not on the accused. In such cases, it can not be said that the statutory notice was served upon the accused and in that context the conviction

was set aside by the Apex Court.

8. I have gone through the impugned Judgment delivered by the learned Sessions Judge. The learned Sessions Judge has considered that the notice of demand under clause 'B' of proviso to Section 138 of the Act was not served upon the present non applicant. In that view of the matter, the offence was not complete and the learned Sessions Judge was right in acquitting the present non applicant.

9. There is no merit in the present Revision Application and hence it is dismissed.

[V.M.DESHPANDE, J.]

KNP/Cr. Revn. Apln. 74.2013