

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

Criminal Writ Petition No.512 of 2015

Namit Gopal Agrawal. **.. Petitioner.**

Versus

Jalgaon Consumer Product
Distributor Cooperative Credit
Society Ltd. Jalgaon And Another. **.. Respondents.**

With

Criminal Writ Petition No.513 of 2015

Geetadevi Gopaldas Agrawal. **.. Petitioner.**

Versus

Jalgaon Consumer Product
Distributor Cooperative Credit
Society Ltd. Jalgaon And Another. **.. Respondents.**

Shri. Sanket Kulkarni, Advocate holding for Smt. Rashmi
S. Kulkarni, Advocate, for petitioner.

Shri. P.N. Mule, Additional Public Prosecutor, for
respondent No.2.

CORAM: T.V. NALAWADE, J.

DATE : 1st JULY 2015

ORDER:

1) Both the petitions are filed to challenge the judgments and orders of Criminal revisions (Criminal Revision Application No.127/2014 and Criminal Revision Application No.128/2014). The revisions were filed by the present petitioners in the Sessions Court Jalgaon to challenge the orders made by the learned Judicial Magistrate First Class in criminal cases like RCC No.386/2004 and RCC No.389/2004 on the applications filed by the petitioners. Both the sides are heard.

2) Private complaints are filed for offences punishable under section 138 of Negotiable Instruments Act and section 420 of the Indian Penal Code. Process is issued for offence punishable under section 138 of the Negotiable Instruments Act. Jalgaon Consumer Products Distribution Cooperative Credit Society has filed the complaints. In the proceedings applications were filed titled as notice under section 66 of the Evidence Act and then applications were filed under section 91 of the Code of Criminal Procedure. In the so called notice the accused

had asked the complainant to produce documents like record of loan taken by the accused persons from complainant society, account extract of the loan account, bye laws of the credit society, resolutions passed by the society from time to time in respect of said loan account, record of some more loan accounts of years 1999-2000 and 2001, balance sheet of the society for the year 1998-99 till date, audited accounts of the society from the year 1999 till date, list of borrowers of the society from the year 1999 till date, list of directors of the society elected from 1999 onwards till date with identify proof, residential proof of the directors, original record of bond, promissory note, agreement, receipts allegedly executed by the accused, record showing qualification of the manager Shri. Sandip Ramesh Jagtap including school and college leaving certificates, letter of appointment of the manager, copy of bond executed by him, extract of account from Jalgaon Merchant Cooperative Bank Ltd. where the society has account from the year 1999 till date, extracts of saving banks accounts of brothers of the accused, mother of the accused, late father of the accused, muster of the employees of society showing their names,

designations starting from 1999 till date, record of dues and claims against the mother of the accused and father of the accused etc. The applications were opposed by the society. After hearing both the sides, learned Judicial Magistrate has rejected the applications. It is observed that seeking such relief is nothing but tactics to protract the decision of the case. Provisions of sections 118 and 139 of the Negotiable Instruments Act are also referred to and it is observed that it is up to the complainant to prove the case and the aforesaid record cannot be called.

3) Considering the ingredients of section 138 of the Negotiable Instruments Act and considering the defences which are available to the accused in such case this Court has no hesitation to hold that the aforesaid record is not at all relevant to the matter. It is up to the complainant to give evidence to lay foundation to make out its case. The complainant needs to produce record of loan transaction for laying such foundation and complainant can request the Court to use the aforesaid presumptions. Copy of reply given to the statutory notice by the accused is produced in these proceedings and he

has only contended that he is not liable to pay anything to the society and he is deceived by the society. He is denying the liability but the contentions are very vague. As the case is very old, of the year 2004, this Court holds that it is not possible to interfere in the order made by the learned Judicial Magistrate which is confirmed by the Sessions Court in revision.

4) In the result, both the petitions stand dismissed.

Sd/-
(T.V. NALAWADE, J.)

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