

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

CRIMINAL APPLICATION NO. 3406 OF 2014

JYOTI KRANTI GRAMIN BIGAR SHETI SAHAKARI PATH SANSTHA LTD.
VERSUS
KASHINATH MANIKRAO SHETE

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Advocate for Applicant : Mr. More Abhijit S.

Advocate for Respondent : Mr. Wagh Babasaheb V.

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CORAM : **INDIRA K. JAIN, J.**

DATE : 27th April, 2015.

Per Court:

. This is an application seeking leave to appeal against the order of acquittal. The learned Judicial Magistrate First Class, Jamkhed by order dated 24th March, 2014, acquitted the Respondent of the offence punishable under Section 138 of the Negotiable Instruments Act.

2 The case of Applicant / original Complainant was based mainly on dishonour of cheque issued by Respondent in favour of Applicant / Society towards repayment of loan.

3 Learned Judicial Magistrate First Class in the judgment elaborately discussed the evidence of Complainant. CW1 Subhash admitted in evidence that no documentary evidence is placed on

record to show that accused received cheque issued by Complainant/ Society. It was a business loan. Still the documents pertaining to loan transaction were not brought forth.

4 Further, it is evident from the evidence of CW1 Subhash that he had no personal knowledge regarding issuance of cheque. It can be seen from the evidence that loan was sanctioned only to the members of Society. Complainant has not proved that accused was the member of Society.

5 During the course of arguments, learned counsel for Respondent submitted that failure of Complainant to produce documents of loan is fatal to his case. In support, he relied upon the judgment of this Court in the case of **Devarsha Dnyaneshwar Parob Vs. Mulgao-Sirigao-Advalpal, V.K.S. Society Ltd. And another**¹. In this case, provisions of Sections 118(a) and 138 of the Negotiable Instruments Act were discussed. It was observed that standard of proof on the part of an accused and that of the prosecution in a criminal case is different. The question as to whether the presumption is rebutted or not, must be determined keeping in view the other evidence on record. So far as the defence of accused is concerned it has to be probable and standard of proof is by preponderance of

1 2011(1) Mh. L. J. 781

probabilities.

6 In the present case, accused had established that defence raised by him was probable. It was for the Complainant to prove that there was indeed liability on the part of accused towards loan allegedly taken from the Society. Complainant has failed to prove the same. Non production of documents as stated above further leads to an inference against the Complainant.

7 Thus on going through the judgment delivered by the trial Court, no illegality or perversity is found. Considering the evidence, this Court does not find it a fit case where leave to appeal can be granted.

8 In the result, criminal application is dismissed.

[INDIRA K. JAIN, J.]

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