

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

927 CRIMINAL APPLICATION NO.3262 OF 2015

Shri.Kedareshwar Sahakari Sakhar
Karkhana Ltd.

... Applicant.

Versus

The State of Maharashtra and
another.

... Respondents.

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Mr. V.B.Jadhav, Advpocate h/f. Mr.Ashwin V. Hon, Advocate
for Applicant;

Mr.S.K.Tambe, A.P.P. for Respondent No.1 / State ;

Mr.R.K.Temkar, Advocaes for Respondent No.2.

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CORAM : P.R.BORA, J.

Date of Reserving the order : 02.12.2015

Date of Pronouncing the order : 05.12.2015

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PER COURT:-

1) Heard. Vide the present application, the applicant has sought leave to file an appeal against the judgment and order dated 11th December, 2014 passed by the Judicial Magistrate, First Class, Shevgaon in Summary Trial Case No.45/2002, whereby the learned Magistrate has acquitted the accused in the said case of the offence punishable under section 138 of Negotiable Instruments Act.

2) The learned Counsel appearing for the applicant submitted that the learned Magistrate has failed in properly appreciating the evidence on record. Learned Counsel further submitted that, the trial Court has also misconstrued the provisions of the Negotiable Instruments Act as well as the Indian Evidence Act. The learned Counsel further submitted that for wrong reasons the trial Court has dismissed the complaint and acquitted the accused. He therefore prayed for granting leave to appeal.

3) The learned Counsel appearing for the Respondent No.2 i.e. Original accused, opposed for granting leave as sought by the applicant. Learned Counsel submitted that, the learned trial Court has passed well reasoned order, which does not require any interference.

4) The learned Magistrate has dismissed the complaint on following three grounds (i) That the complainant has failed to prove that the complaint is filed by an authorized person. (ii) That, CW.1 Mukund was not having any proper authority to depose for and on behalf of the complainant sugar factory. (iii) That, the cheque in question was for an amount more than the amount of

outstanding admitted by CW.1 Mukund.

5) Perusal of the record shows that, the complainant sugar factor has filed on record the xerox copies of the concerned two resolutions, first authorizing Shri Popat Kacharu Kedar, to file the complaint on behalf of the sugar factory, and the other authorizing CW.1 Mukund Mahajan to depose on behalf of the complainant sugar factory. It is the contention of the applicant before this Court that when the aforesaid authorizations were not denied or disputed by the accused, the learned Magistrate ought not have discarded the said evidence on the ground that, the certified copies of the said resolution are not placed on record. In so far as the amount of cheque and the amount of outstanding towards the accused is concerned, it has been contended on behalf of the applicant sugar factory that the cheque in question was voluntarily issued by the accused for the amount adding interest in the principal amount.

6) On considering the submissions made on behalf the applicant as aforesaid, it appears to me that, the applicant has raised arguable issues. I am, therefore, inclined to allow the present application. Hence, the following order:

ORDER

- a) The Criminal Application is allowed;
- b) Leave to appeal as prayed for is granted;
- c) The Criminal Application so filed be treated as memo of appeal;
- d) The appeal be registered in accordance with law;
- e) The appeal is admitted;
- f) Action under section 390 of Cr.P.C. be initiated against Respondent No.2.

(P.R. BORA, J.)

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S.P.Rane