

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 3601 OF 2013

Savda Faizpur Nagari Sahakari
Patsanstha Maryadit, Savda,
Tq. Raver, Dist. Jalgaon.

....Applicant

Versus

Yeshwant Meghshyam Mahajan

....Respondent.

Mr. D.B. Thoke, Advocate for applicant.

Mrs. R. S. Kulkarni, Advocate for respondent.

CORAM : INDIRA JAIN, J.

DATED : 28th April, 2015.

ORDER :

This application under section 378 (4) of the Code of Criminal Procedure is filed for grant of leave to appeal against the judgment and order of acquittal passed by the learned Judicial Magistrate, First Class, Bhusawal on 26.2.2013 in SCC No. 2840/04 for the offence punishable under section 138 of the Negotiable Instruments Act.

2) Heard extensively the learned counsel for parties.
Perused the original record.

3) The gist of the facts are required to be given here.

Applicant is a Registered Cooperative Society. It disburses loans to its members in accordance with the procedure. In the year 2001, respondent/accused approached the Society and requested for loan of Rs. twenty lacs for business purpose. The loan demand application of respondent was processed by the Society and loan of Rs. twenty lacs was sanctioned to him. According to complainant, amount of Rs. twenty lacs was disbursed to respondent on 19.11.2001 and 26.11.2001. Respondent withdrew the said amount vide cheque Nos. 1846 and 1847. At the time of borrowing loan, various documents like promissory note etc. were executed by him.

4) Complainant submitted that on 28.9.2004 cheque bearing No. 184772 for the amount of Rs. 30,84,238/- came to be issued by respondent was dishonoured for want of sufficient funds. On issuance of legal notice, complainant filed Summary Criminal Case No. 2840/2004 against the respondent under section 138 of the Negotiable Instruments Act. The particulars of offence were explained to the accused. Complainant and accused adduced evidence. On hearing parties, Trial Court came to the conclusion that offence under section 138 of the Negotiable Instruments Act is not proved and acquitted the accused/ respondent. Being aggrieved, complainant has come

up before this Court.

5) It can be seen from the record that two witnesses viz. Rajendra Raghunath Joshi and Dhananjay Prabhakar Mahajan were examined by the complainant/Society. Accused examined himself and AW 2 - Vasudev Hari Toke in support of his defence. Both the parties produced several documents. Complainant relied upon resolution dated 11.12.2004 sanctioning loan to the accused, cash credit loan application dated 9.11.2001, promissory note, two withdrawal slips, disputed cheque, cheque return memo, statement of accounts, agreement dated 19.11.2001 and demand notice dated 27.10.2004.

6) According to the accused, though five blank cheques were obtained loan was never disbursed to him. It is alleged that one of the five cheques i.e. disputed cheque was misused against him and case under section 138 was filed. In support of defence, accused relied upon notice sent by him to complainant/ Society on 27.9.2004 and counter-foils of five cheques.

7) Relying upon the evidence of AW 2 - Toke and considering the discrepancies in the evidence of complainant's witnesses, Trial Court held that no offence under section 138 of

the Act has been made out. The defence of the accused was accepted and it was observed that cheque in question was not issued in the discharge of legally enforceable debt.

8) During the course of arguments, learned counsel for respondent strenuously submitted that cheques were issued for security and if the cheque was issued towards security or any other purpose, provisions of section 138 of the Negotiable Instruments Act would not be attracted. In support of her submission, learned counsel relied upon **M.S. Narayana Menon alias Mani Vs. State of Kerala and Anr. [2006 (5) Mh.L.J. 676 (S.C.)]**, in which it has been held by the Hon'ble Supreme Court that if a cheque is issued for security or for any other purpose, same would not come within the purview of section 138 of the Negotiable Instruments Act.

9) Needless to state that in an application for leave to appeal, this Court has to see, whether there is an arguable case on merits or not and the minute scrutiny of evidence can be taken care of on merits if leave to appeal is granted.

10) On going through the testimonies of witnesses, documents produced on record as indicated above, this Court

finds that there is an arguable case on merits for the complainant/Society and so leave to appeal has to be granted.

11) Application is accordingly allowed. Leave is granted.

12) Appeal is **admitted**.

13) Learned counsel Smt. R.S. Kulkarni wavier notice after admission. Action under section 390 of the Code of Criminal Procedure is dispensed with against the respondent since learned counsel Smt. R.S. Kulkarni is representing the respondent in appeal.

[INDIRA JAIN, J.]

ssc/