IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.4122 OF 2013

M/s. Deepakkumar Shankarlal and
Company through its Partner,
Shri Ratanlal Shankarlal Pokharna,
Age-52 years, Occu:Business/agriculture,
R/o-Adate Bazar, Ahmednagar,
Tq. & Dist-Ahmednagar.

...APPLICANT
(Ori. Complainant)

VERSUS

1) Shri Govind Rajendra Medewar,
Age-Major, Occu:Business,
R/o-Alamgir, Bhingar, Tq-Nagar,
Dist-Ahmednagar.

2) The State of Maharashtra,
Through P.P., High Court,
Aurangabad.

...RESPONDENTS

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Mr. S.B.Bhosale Advocate h/f. Mr. S.P. Brahme Advocate for Applicant.
Mr. Amol S. Gandhi Advocate for Respondent No.1.
Mrs. S.D. Shelke, A.P.P. for Respondent No.2.

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CORAM: A.I.S. CHEEMA, J.

DATE : 23RD FEBRUARY, 2015

ORAL ORDER :

1. Heard learned counsel for the Applicant. Perused record.

2. Learned counsel for Applicant submits that the Respondent No.1 -accused had stood guarantor for one Smt. Meera Mahajan to whom Applicant firm had given Rs.45,000/- as hand-loan. Respondent No.1 was known to the Applicant being customer of the Applicant. On his introduction, the amount was given to Smt. Meera Mahajan. As accused stood guarantor he had issued cheque, which bounced. According to the learned counsel, the Applicant-complainant proved the case but the trial Court has wrongly acquitted the accused. It is argued that the Applicant has relied on the case-laws which the trial Court referred in its Judgment in Para 13 but did not discuss the same in details and thus the Judgment is required to be interfered with.

3. Going through the material available, what can be seen is that the Applicant claims that it was running a grocery shop and the Respondent No.1 was known to the Applicant. One Smt. Meera Mahajan who was doing business of printing under the name and style as "Meera Printers", was introduced by the Respondent No.1 to the Applicant and requested to advance Rs.45,000/- to her as hand-loan. According to the Applicant, the Respondent No.1 - accused stood guarantor and bearer cheque was issued in the name of Meera Printers dated 11th February 2005, which was en-cashed. The Applicant brought the case that Respondent No.1 -accused issued post-dated cheque of Rs.45,000/- dated 7th February 2008 (which is almost three years later). The Applicant claims that as Meera Mahajan did not return the money, the cheque issued by the Respondent No.1 - accused was deposited in the bank and the same bounced. Inspite of notice, the Respondent No.1 did not pay

the amount and thus the case was brought. The Rulings relied on and referred to by the trial Court, were regarding the liability of guarantor under Section 138 of the Negotiable Instruments Act. Learned counsel for Applicant is unable to show that the trial Court acquitted the Respondent No.1 - accused holding that guarantor was not liable to pay the amount. In fact the Judgment shows that the trial Court discussed the evidence and on its merits found that offence was not proved against the Respondent No.1 - accused. The trial Court discussed that the complainant had not obtained any identity card, Shop Act license, electricity bill and others documents from Meera Mahajan. He did not obtain any photograph and agreement from Meera Mahajan. The trial Court held that no businessman would pay amount to unknown person without execution of document. Trial Court also noticed that the amount paid to Meera Mahajan was not reflected in Income Tax Returns of the Applicant firm, under the heading of "debtors and

Creditors" and complainant had not produced his personal income tax returns papers. Trial Court observed that the amount was unaccounted money. Trial Court also found that complainant has not mentioned the exact date in his demand notice, complaint and affidavit of examination-in-chief on which date he paid hand-loan amount to Meera Mahajan. Trial Court further discussed document Exhibit 53 of the year 2004-2005 relating to amount paid to Meera Mahajan. The trial Court discussed that the entry showed that amount was carried forward from the year 2003-2004; and that if the amount of Rs.45,000/- was paid to Meera Mahajan on 11th February 2005, then there was no any cause to show the said amount in the record of the year 2004-2005. The trial Court discussed the defence of the accused that he was having business of grocery shop and the accused purchased grocery articles from the complainant's shop and had issued the concerned cheque as security for hand-loan amount. Trial Court also noticed that although transaction was shown to be of the year 2005 regarding the cheque concerned, the cheque was of the century of "19". For reasons discussed, the trial Court came to conclusion that complainant failed to prove legally enforceable debt or liability.

4. Looking to the evidence discussed and reasons recorded and the fact that the Respondent No.1 - accused has been acquitted, the above reasonings and view taken by the trial Court being possible view, no interference is called for.

5. The Criminal Application is rejected.

[A.I.S.CHEEMA,J.]

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