

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4312 OF 2013

Bhagwan Balram Nagari Sahakari
Patsanstha Ltd.,
Registered Office at Shivganga Complex,
Gajanan Nagar, Garkheda,
Aurangabad Through its authorized member
Shri Subhash Gangadhar Palodkar,
Age – 65 years, Occu. : Agri.,
R/o Aurangabad .. Applicant

VERSUS

Sow. Shonha w/o Lalmani Mishra,
Age – Major, Occu. : Business/Agri/Service,
R/o. At N-9, R-26/115, Raigadnagar,
CIDCO, Dist. Aurangabad .. Respondent

Mr. V.D. Sonwane, Advocate for the applicant
Mr. S.S. Wagh, Advocate for the respondent

CORAM : M.T. JOSHI, J.
DATE : 04/12/2015

ORAL ORDER :

Heard both sides.

2. Aggrieved by the judgment and order dated 23/04/2013 of the learned Judicial Magistrate First Class, Aurangabad passed in Sessions Case No. 2121 of 2011, thereby acquitting the present respondent from the offence punishable under section 138 of the Negotiable

Instruments Act, the present applicant wants to prefer an appeal and, therefore, the present application for leave to file appeal is filed.

3. Hearing from both sides would show that while the present complainant/applicant failed to plead as to when the loan was advanced to the respondent, which according to the exhibited documents, was given on 01/07/2009, the respondent placed on record the receipts issued by the complainant-Society of the earlier period i.e. from 12/03/2007 onwards.

4. Mr. Sonawane, learned counsel for the applicant submits that in-fact, these receipts are regarding another loan amount obtained earlier. However, the trial Court wrongly did not consider about the date of advancing loan in the present case and, therefore, the respondent was wrongly acquitted.

. He further submits that in a dispute under section 91 of the Maharashtra Co-operative Societies Act, even the co-operative Court has passed the decree against the respondent.

5. Mr. Wagh, learned counsel for the respondent however opposed the plea. He submits that the respondent has clearly proved that the loan amount is repaid.

6. Upon hearing both the sides, it appears that a certain confusion is caused due to non-pleading of the case in the trial Court. In the trial Court, the applicant has merely pleaded that the cheque was issued towards the legally enforceable liability, the same was dishonoured and, therefore, the complaint was filed without referring to the loan agreement. Mr. Sonawane submits that the proceedings may be remanded so that efforts for amendments to the complaint can be made.

7. In that view of the matter, in my view, a case for interference in the impugned judgment and order is made out. In the result, Criminal Application is allowed. Leave to file appeal is hereby granted.

8. Appeal be registered as per the due procedure.

9. Heard both sides in the Appeal also. For the reasons already forwarded, the impugned judgment and

order of the learned Judicial Magistrate First Class, Aurangabad is hereby set aside. The matter is remanded to the learned Judicial Magistrate First Class, Aurangabad.

. The learned Judicial Magistrate First Class, Aurangabad to consider the above pleas of the appellant/applicant and the pleas of the defence and, thereafter, decide the case afresh.

10. With these directions, the Appeal is disposed of.

11. Both the parties are directed to appear before the learned trial Court on 10th February, 2016.

[M.T. JOSHI]
JUDGE

arp/