FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD.

Office Notes, Office Memoranda of Coram, appearance, Court's orders or directions and Registrar's orders.	Court's or Judge's orders.

CRIMINAL APPLICATION NO. 4759 OF 2014

RADHABAI W/O BHAGWAN CHOURE
VERSUS
PRIYADARSHANI MAHILA SAHAKARI BANK LTD BEED
...
Advocate for Applicant : Mr. V. P. Sawant, Advocate h/f Mr. Hawale Atul B.
Advocate for Respondent: Mr. C. V. Dharurkar.
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CORAM: T. V. NALAWADE, J.
DATED: 22nd JUNE, 2015.

PER COURT:

1. The proceeding is filed under section 482 of Cr. P. Code for quashing of proceedings of S.C.C. No. 738 of 2012 pending before learned J.M.F.C., Beed which is filed by Respondent for offence under section 138 of Negotiable Instruments Act. Both sides are heard.

2. The relief of quashing of the proceeding is claimed mainly on the ground that no amount can be said to be due from the present applicant to the society, respondent in view of the developments which took

place subsequent to taking of the loan. Learned counsel for the Applicant submitted that the loan was disbursed in the year 1996 but after that there came the scheme of the Government in which the Government paid the loan of the farmers like the applicant. He submitted that as per his information the amount of Rs.50,000/- was credited in his loan account under the Scheme. Learned counsel for the Applicant submitted that after starting of the dispute she paid loan amount Rs.1.43 Lakh and thus the amount of around Rs.1.93 Lakh has been paid as against the loan amount of Rs.25,000/- taken by the applicant from the society. The learned counsel submitted that in view of the provision of Section 44-A of Maharashtra Cooperative Societies Act the society is not entitled to recover more than double the total amount of principal debt from the applicant and this circumstance also needs to be considered. He submitted that R.B.I. has given similar direction in the year 2004 and so it cannot be said that the applicant is in dues of the society as at present.

3. It is the case of the applicant that when the loan was taken she had given many blank cheques and the

society is misusing the said blank cheques. Learned counsel for the Applicant submitted that the cheque which was given in the year 1996 was deposited for encashment in the year 2012 and this circumstance also needs to be considered and so the proceeding needs to be quashed. He placed reliance on the case of "**Hinganghat Nagri Sahakari Pat Sanstha Maryadit V/s Ashok Keshavrao Fukat**" reported in **2008 ALL MR (Cri) 1264** (Nagpur Bench of this Court). In this case the proceeding under section 138 of Negotiable Instruments Act was held to be not tenable as the Court found that there was no existing enforceable liability. It appears that the provisions of Section 44-A of aforesaid Act was also considered by this Court.

4. This Court is not expected to give decision on disputed facts. On one hand there is a case of the society that as against the existing liability the cheque in question was given by the accused and on other hand the accused wants to defend the case on aforesaid grounds. These disputed facts need to be decided by the Criminal Court before whom the case under section 138 of Negotiable Instruments Act is pending. This Court

holds that in view of the facts of the present case the proceeding itself cannot be quashed.

5. In the result, the applicant stands dismissed.

[T. V. NALAWADE, J.]

Dt.22/06/2015
ans/4759