

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4860 OF 2014

Bahinabai Nagari Sahakari
Patpedhi Ltd., Asoda,
Tq. & Dist. Jalgaon,
Through Pramod Ganpat Patil,
Age : 47 years, Occu.: Service,
R/o Asoda, Tq. & Dist. Jalgaon .. Applicant

VERSUS

Ganesh S/o Chagan Narkhede,
Age : Major, Occu. : Service
R/o Asoda, Tq. & Dist. Jalgaon .. Respondent

Mr. M.S. Kulkarni, Advocate h/f Mr. B.S. Deshmukh, Advocate
for the applicant
Mr. A.K. Tiwari, Advocate for the respondent

CORAM : M.T. JOSHI, J.
DATE : 10/12/2015

ORAL ORDER :

Heard both sides.

2. Perused the reasoning forwarded by the learned Judicial Magistrate First Class, Jalgaon vide order dated 28/02/2014 passed in S.C.C. No. 4805 of 2005.

3. Aggrieved by aforesaid impugned order thereby recording acquittal of the respondent from the offence punishable under section 138 of the Negotiable Instruments Act, the present applicant a credit co-

operative society wants to prefer an appeal and, therefore, the present application for leave to file appeal is filed.

4. While according to the applicant/complainant, it has disbursed loan of Rs.4 Lakhs to the present respondent, against the repayment of which the cheque was issued by the present respondent for an amount of Rs.4,96,000/- which was dishonoured, according to the respondent, he being earlier an employee of the society, there were allegations against him of commission of misappropriation and towards the said alleged misappropriated amount of Rs.4 Lakhs, it was shown that the loan was disbursed to him.

5. The learned Judicial Magistrate First Class, Jalgaon has held that the presumption that the cheque was passed for a legally enforceable debt, has been rebutted in the above circumstances.

6. Upon hearing both sides, in my view, an issue has arisen, as to whether a consent to repay the alleged amount of misappropriation vide the cheque, would be a legally enforceable liability or not.

. Since arguable case is made out, leave to file appeal is hereby granted. Application accordingly is allowed and disposed of.

7. Appeal be registered as per the due procedure.

8. Upon registration of the appeal, for the reasons already forwarded, the appeal shall stand admitted. Learned counsel for the respondent waives notice for the respondent, upon admission of the appeal.

9. Action under section 390 of the Code of Criminal Procedure to follow.

10. The respondent – Ganesh S/o Chagan Narkhede be released on bail by the learned Judicial Magistrate First Class, Jalgaon, upon respondent's execution of P.R. bond in the amount of Rs.20,000/- (Twenty Thousand) and also upon furnishing surety in the like amount, so as to secure the presence of the present respondent in the appeal in future.

11. Hamdast of the present order is granted.

Sd/-
[M.T. JOSHI]
JUDGE

arp/