

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.4550 OF 2013

Kalika Nagari Sahkari Patsanstha Ltd. ... APPLICANT

VERSUS

Maruti s/o Tukaram Shirole ... RESPONDENT

.....
Shri L.B. Palod, Advocate for applicant
Shri N.C. Garud, Advocate for respondent
.....

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

DATED: 24th February, 2015.

ORAL ORDER :

1. Heard counsel for applicant and counsel for respondent - accused. Counsel for applicant submitted that, the applicant - complainant is Patsanstha, from whom the respondent accused had taken loan of Rs.50,000/- and for getting loan, as per the agreement, he was required to invest 10% of the amount for shares. The respondent - accused did not return the amount and thus, cheque issued by the respondent was deposited for encashment, and the same bounced.

According to the counsel, the trial Court wrongly observed that the complainant was relying on the evidence of Someshwar on the basis of standing authority and ignored Exhibit 23, copy of which has been filed at Exhibit B, which shows that, in addition, specific authority had also been given to Someshwar. It is further argued that the trial Court wrongly observed that, Rs.50,000/- was not advanced as 10% had been deducted forgetting that the agreement itself was that the respondent - accused would invest 10% towards shares. Counsel submits that, the account extract was not correctly interpreted by the trial Court.

2. Counsel for respondent submitted that, the complainant had taken cheque from the accused, of which the contents were not filled by the accused. According to him, it was the burden on the complainant to prove the legally recoverable debt. The counsel submitted that, the trial Court has rightly discussed the evidence and acquitted the accused.

3. Looking to the submissions, there is arguable case. The evidence needs to be reappreciated. Leave is granted. Application is allowed. Application is converted into Criminal Appeal.

4. Appeal is **admitted**.
5. Mr. Garud, learned counsel dispenses with notice for respondent after admission of appeal.
6. Paper Book be got prepared.
7. Action under Section 390 of the Code of Criminal Procedure be taken against the respondent - accused in the trial Court and brief report of compliance be called.

(A.I.S. CHEEMA, J.)