

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

Criminal Application No.4555 of 2011

Mahatma Phule Nagari Sahakari
Path Sanstha Ltd. Aurangabad.

.. Applicant.

Versus

The State of Maharashtra
And Another.

.. Respondents.

Shri. Ram S. Shinde-Borolkar, Advocate, for applicant.

Shri. P.N. Muley, Additional Public Prosecutor, for
respondent No.1.

Shri. K.D. Pande and Shri. B.A. Dhengle, Advocates, for
respondent No.2.

CORAM: T.V. NALAWADE, J.

DATE : 17th AUGUST 2015

ORDER:

1) The application is filed under section 378(4) of the Code of Criminal Procedure, 1973 to grant leave to file appeal against the judgment and order of S.S.C. No.3801 of 2006 which was pending in the Court of the Judicial Magistrate, First Class, Aurangabad. The Magistrate has acquitted the respondent of the offence punishable under

section 138 of the Negotiable Instruments Act. Heard learned counsel for the applicant. Seen the reasoning. Respondent is duly served.

2) The reasoning given shows that the acquittal is given on the grounds : (i) xerox copy of the resolution of the present applicant-complainant bank was filed and as per the Judicial Magistrate it was necessary to prove the resolution; (ii) the original record of disbursement of the loan transaction was not produced and it was produced after the cross-examination and there was no opportunity to the defence.

3) The accused did not reply the statutory notice. Loan was taken from the cooperative bank and there is record of aforesaid nature. The Judicial Magistrate could have made appropriate orders in that regard but on this ground and when there is no evidence in rebuttal the Magistrate could not have discarded the evidence. This Court holds that there is good arguable case for the applicant in appeal.

4) In the result, the application is allowed. Leave is granted.

5) The appeal is admitted. Notice after admission, it is made returnable on 14 September 2015.

Sd/-
(T.V. NALAWADE, J.)

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