

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 5992 OF 2013
(Late Rajiv Gandhi Nagari Patsanstha Maryadit,
Ahmednagar Vs. Shivaji Waman Damale)

Mr. R.R. Karpe, Advocate for the applicant
Mr. B.N. Palve, Advocate for the respondent

CORAM : M.T. JOSHI, J.
DATE : 25/03/2015

ORAL ORDER :

1. Heard both sides.
2. Aggrieved by the acquittal of the respondent from the offence punishable under section 138 of the Negotiable Instruments Act, the present application for grant of leave to file appeal is filed.
3. Upon hearing both sides, leave to file appeal is granted. Office to register the appeal.
4. The criminal appeal stands admitted, upon registration thereof. The appeal is taken up for final hearing, with consent of learned counsel for both the sides.

5. The present appellant – the Credit Cooperative Society came with a case that on 30th november, 1999, it had advanced loan of Rs. 15,000/- to the wife of the respondent. However, while some of the loan amount was paid by the wife of the respondent, the arrears of the loan with interest accrued thereon, totally amounting to Rs. 17,505/- was remained to be paid and therefore, towards the repayment of the said loan amount, the respondent issued a cheque on 24.12.2005 drawn on State Bank of India, branch at Kedgaon, Ahmednagar. The same was, however, dishonoured by the bank and therefore, statutory notice was issued to the respondent. As the amount was not paid by him, the complaint was filed.

6. The defence of the present respondent was that when the loan was advanced, the cheque with blank spaces was issued. The loan amount was repaid by time to time payment through Ramesh Ahirkar, the authorized agent of the appellant. However, he did not deposit the said amount with the appellant-Society and as such, the respondent is not liable to pay any amount.

7. The record would show that the same defence was taken in the reply-notice of the present respondent which was proved at Exhibit-93. The branch manager of the present appellant-Society, however, when confronted with this defence, has simply given a evasive reply by saying that the said agent Ahirkar had left the job but he would not be able to tell as to under what circumstances and for what reason, the job was left by him.

8. Taking into consideration the overall facts, the learned Judicial Magistrate First Class came to the conclusion that the presumption arising out of the passing of the cheque for consideration has been rebutted and therefore, the acquittal of the respondent was recorded.

9. Upon hearing both sides, it would reveal that though the present appellant-complainant was forewarned by giving reply to the notice that the amount was handed over to their authorized agent and the fact that the said agent was employed by the appellant and when in the cross-examination, instead of coming with clear

documents in this regard, evasive replies were given by the witness of the present appellant/Society, in my view, the reasonable and probable view has been taken by the learned Judicial Magistrate First Class. In the result, the following order:-

10. The criminal appeal is dismissed without any order as to costs.

[M.T. JOSHI]
JUDGE

npj/criapln5992-2013