

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

CRIMINAL APPLICATION NO.5536 OF 2012

The Maharashtra State Co-operative
Marketing Federation ... APPLICANT

VERSUS

Shivprasad s/o Chandusa Satpute ... RESPONDENT

.....
Shri D.N. Suryawanshi, Advocate for applicant
Shri A.I. Deshmukh, Advocate holding for
Shri B.G. Deshmukh, Advocate for respondent
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CORAM: A.I.S. CHEEMA, J.

DATED: 16th January, 2015.

ORAL ORDER :

1. Heard learned counsel for the applicant and learned counsel for respondent. Perused record. As per the applicant (original complainant), respondent - accused has business dealings with the complainant's Co-operative Society, dealing in agricultural products, seeds etc. and there were amounts outstanding. For the amounts outstanding, the respondent - accused gave cheque of Rs.4,32,515/- which bounced and thus

the prosecution was brought. Learned counsel for the applicant submits that, the trial Court acquitted the accused only on the basis that there were letters sent by the District Marketing Officer, informing the accused to pay the amount or in default, the cheques would be deposited in Bank. The trial Court, on this basis, held that legally enforceable debt was not proved and that the cheques were issued only for security. According to the counsel, when there is transaction of purchase on credit, if the amount was outstanding, liability was there and so, if cheque was issued, offence under Section 138 of the Negotiable Instruments Act will be attracted.

2. Counsel for the respondent, referring to the observations of the trial Court in paras 35, 36 and 39, submitted that the cheque issued in advance was only by way of security and the trial Court rightly held that offence was not established.

3. Looking to the reasoning recorded by the trial Court and the submissions made at the bar, and the statement under Section 313 of the Code of Criminal Procedure with reference to Question No.6 that accused did have transactions of purchase of fertilizers on credit from the complainant, there is arguable case. Leave is granted. Criminal Application is converted into Criminal Appeal.

4. Appeal is **admitted**.
5. Mr. Deshmukh, learned counsel dispenses with notice notice for respondent after admission of the 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.

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

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