

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

**Criminal Writ Petition No.1540 of 2014
And
Criminal Writ Petition No.1541 of 2014**

Kantilal s/o Mohanlal Kotecha. .. **Petitioner.**

Versus

Shri. Ganesh Urban Co-op. Credit
Society Ltd. Bhusawal,
District Jalgaon. .. **Respondent.**

Shri. D.K. Kulkarni, Advocate, for petitioner.

Shri. A.D. Shinde, Advocate, for respondent.

CORAM: T.V. NALAWADE, J.

DATE : 14th JULY 2015

ORDER:

1) Both the petitions are filed to challenge the orders made by the Sessions Court in criminal appeals filed by the petitioner on applications filed for giving permission to lead evidence in appeal. The applications filed under section 391 of the Code of Criminal Procedure are rejected by the learned Additional Sessions Judge Bhusawal (in Criminal Appeal Nos.42/2014 and 10/2014). Both the sides are heard.

2) It is the case of the petitioner that the cheques which bounced were given by way of security when the applications for loan were made to the complainant society and so there was no existing liability when the cheques were issued. The petitioner of the first proceeding was guarantor to the loan transaction and the same person had obtained loan under different transaction from the society. Thus the first cheque was given as guarantor and the cheque from second proceeding was given as principal debtor. It is specific case of the society that when the cheque amount had become due, the cheques were given for repayment of the loan outstanding. The Sessions Court has rejected the applications by observing that these are the delaying tactics.

3) The record of the criminal case of the first proceeding filed under section 138 of the Negotiable Instruments Act shows that no such defence was taken before the trial Court. However, such defence was taken before the trial Court in the case from second proceeding. The learned counsel for the petitioner was allowed to

show some record to substantiate the contentions. He tried to show that along with the loan application the guarantor had produced the cheque and he had undertaken to see that there was repayment of the loan and in case of default committed by principal debtor, authority was given to the society to present the cheque for encashment. In the second proceeding the cheque was given by the principal debtor and similar authority was given. Copies of so called consent letters are produced but they do not bear dates. It is specific case of the society that the cheques were given when default was committed. Learned counsel for the petitioner submitted that some of the cheques from the same cheque book were encashed in the year 2000 and it is not probable that the cheques in question were given in the year 2004. This submission is not acceptable as the cheques were drawn and it was up to the accused to show during trial that the cheques were given to him by his bank much prior to the date of cause of action and he had also given those cheques to the society much prior to the so called date of cause of action. No such specific defence was taken. No evidence was given by the accused to prove these contentions.

4) The cases were filed in the year 2004 and the appeals are also very old. Only because the appeals were transferred to the newly created Sessions Division, new numbers are given to the appeals in the new Court but the appeals were filed in the years 2008 and 2006. There is one more circumstance, similar attempt was made by the other accused from the same transactions and this Court has dismissed the writ petition filed by other accused. Thus these are nothing but delaying tactics of the accused,convicts. This Court holds that interference is not possible in the orders made by the appellate Court.

5) In the result, both the petitions stand dismissed.

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

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