IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

rpa

CRIMINAL APPLICATION NO.26 OF 2015

Chinchwad Gramin Bigar Sheti
Sahakari Patsanstha Maryadit, Chinchwad .. Applicant
Vs.
Shivajirao S. Dhole & Anr. .. Respondents

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Mr.Vaibhav R. Gaikwad, Advocate for the Applicant.
Ms.Anamika Malhotra, A.P.P. for Respondent – State.

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CORAM : ABHAY M. THIPSAY, J.

DATED : JANUARY 21, 2015.

P.C. :

The applicant, a Sahakari Patsanstha, had prosecuted the respondent no.1 herein on the allegation that the respondent had committed an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (N.I. Act). The learned Magistrate, after holding a trial, came to the conclusion that the applicant had failed to prove its case against the respondent no.1. He therefore, passed an order of acquittal. Being aggrieved by the said order of acquittal, applicant has approached this Court by the present application, and is seeking Leave to file an Appeal from the said order. The case of the applicant was that one Shankarrao Dhole, father of the respondent no.1 had taken a loan from the applicant society in the year 2003. The loan amount was Rs.1,75,000/- (Rupees One Lac Seventy Five Thousand). That, the loan remained unpaid. The said Shankarao Dhole passed away. The applicant, therefore, was insisting on the repayment of the loan by contacting the respondent no.1, who on 6th May, 2008, gave a cheque in the sum of Rs.1,56,010/- (Rupees One Lac Fifty Six Thousand and Ten) to the applicant. The said cheque was dishonoured for want of sufficient funds in the drawer's account. Since the amount of the cheque was not paid even after making a demand for the same in writing, the respondent no.1 was prosecuted. I have gone through the application and the annexures thereto. I have carefully gone through the impugned judgment.

2 In paragraph no.2 of his Judgment, the learned Magistrate mentioned the facts of the case properly. The Magistrate observed that the responsibility to repay the amount of loan was primarily of the father of the respondent no.1. The Magistrate observed that when the borrower had not repaid the amount, the responsibility in that regard was of the guarantors. The respondent no.1 was not the guarantor.

3 Regarding the contention of the applicant that 'the

respondent no.1 had accepted the existence of the said loan', the Magistrate observed that it would only mean that the respondent no.1 had no objection for repayment of the loan amount from the properties of the joint family. The Magistrate observed that though there were other heirs, the responsibility to repay the loan fell on the respondent no.1 alone, could not be accepted.

4 In the cross-examination of the applicant's witness, the respondent no.1 suggested that the blank cheques were obtained from him by giving him threats that the property that had been mortgaged as a security for the repayment of loan, would be sold.

5 The view of the matter, as taken by the Magistrate is a possible view. It is well settled that under such circumstances, grant of Leave would be futile.

6 Leave refused.

8 Application is rejected.

(ABHAY M. THIPSAY, J.)