IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

rpa

CRIMINAL APPLICATION NO.30 OF 2015
IN
CRIMINAL APPEAL NO.   OF 2014

Shaneshwar Nagari Sahakari Pat
Sanstha Ltd., Sangli .. Applicant
Vs.
Sudhirkumar Subhash Patil & Anr. .. Respondents

….

Mr.Wasim Samlewale a/w. Mr.Vinod Sangvikar i/b. Mr.Umesh R. Mankapure, Advocate for the Applicant.
Ms.S.S. Kaushik, A.P.P. for Respondent – State.

….

<u>CORAM : ABHAY M. THIPSAY, J.</u>

DATED : JANUARY 16, 2015.

P.C. :

The applicant, a Co-operative Credit Society, had filed a complaint alleging commission of an offence punishable under Section 138 of the Negotiable Instruments Act against the respondent no.1 herein. The Judicial Magistrate First Class, Sangli after holding a trial found the respondent no.1 not guilty and acquitted him. The applicant is aggrieved by the said order of acquittal, and is, by the present application, seeking leave to file an Appeal against the said acquittal.

2 I have gone through the impugned judgment. I have also gone through the complaint that had been filed by the applicant, a copy of which is annexed to the application.

3 The applicant's case was that loan in the sum of Rs.2,00,000/- (Rupees Two Lac) was disbursed to the respondent no.1. That the respondent no.1 did not pay the installments towards the repayment of the loan, but on 30th August, 2006, he paid a cheque in the sum of Rs.2,25,000/- (Rupees Two Lac Twenty Five Thousand) to the applicant towards the repayment of the loan together with interest. This cheque was dishonoured, and since after a demand notice also the amount was not paid, the respondent no.1 was prosecuted.

4 The learned Magistrate observed that though the case of the applicant society was that all the necessary documents, such as k*arjarokhe*, affidavit, promissory note etc., are always executed while disbursing loans, no such documents with respect to the loan given to the respondent no.1 were produced before the Magistrate, nor any details thereof were mentioned. The Magistrate also observed that the witness for the complainant had admitted that whenever a cheque would be given to the complainant's society, a receipt thereof would be given, but no such receipt was produced in this case.

5 The learned counsel or the applicant submits that there was a presumption, as stipulated in Section 139 of the Negotiable Instrument Act in favour of the applicant, and therefore, it was not necessary to produce the documents showing that loan was indeed disbursed to the respondent no.1.

6 The loan said to have been taken by the respondent no.1 was of Rs.2,00,000/- (Rupees Two Lac), and the amount of cheque was Rs.2,25,000/- (Rupees Two Lac Twenty Five Thousand). Under these circumstances, it was necessary for the applicant to have given the details of the loan account for the purpose of showing as to how the said figure was arrived at. Since it was a part of the business of the applicant–society to disburse loans, they were bound to have the records regarding such disbursement, and the failure to produce the said record before the Court was a circumstance held against the applicant by the Magistrate.

7 It cannot be said that the impugned Judgment suffers from any error or irregularities. In any case, the view of the matter, as taken by the Magistrate is a possible view.

8 Grant of leave in such a situation would be futile.

9 Leave refused.

10 The application is rejected.

(ABHAY M. THIPSAY, J.)