

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 48 OF 2014

M/s. Dindayal Sahakari Patsanstha .. Applicant

v/s.

The State of Maharashtra & Anr. ..Respondents

Ms. Prabha Bodhave i/b. M.K.Kocharekar for the Applicant.
Mrs. R.V.Newton APP for the State.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : SEPTEMBER 08, 2015.**

P.C.

1. The applicant herein was the complainant in C.C.No.66 of 2013 filed before the learned Judicial Magistrate First Class, Pen, under Section 138 of the Negotiable Instruments Act.
2. The case of the complainant was that some time in the year 2011, the respondent no.2 accused had taken loan of Rs.50,000/- and that he had issued cheque No.253165 dated 15.12.2012 for Rs. 72640/- towards repayment of the said loan. The said cheque was

presented in the bank and was dishonoured with endorsement “payment stopped”. A statutory notice was issued. The respondent accused no.2, did not make the payment despite receipt of the notice. Hence complaint under Section 138 of Negotiable Instruments Act came to be filed.

3. The respondent no.2 accused upon service of summons appeared before the trial court. The respondent no.2 accused denied having issued the cheque in the year 2012 and claimed that the said cheque was given towards security.

4. The learned Magistrate upon considering the evidence adduced by the complainant held that the respondent no.2 accused vide letter dated 29.4.2011 addressed to the complainant, had informed the applicant-complainant that the six cheques bearing Nos. 253161 to 253180 were taken from him as security to the loan. Apprehending that the applicant complainant would misuse the said cheques in proceedings under Section 138 of the Negotiable Instruments Act, the respondent no.2 accused called upon the applicant-complainant to return the said cheques. The applicant-complainant had admitted having received the said letter dt. 29.4.2011. The applicant-

complainant had merely denied the statement that the said cheque nos.253161 to 253180 were not given towards security. The letters dated 29.4.2011 and reply dt. 5.5.2011 coupled with the admission of PW1 clearly falsifies the case of the applicant complainant that the cheque bearing No.253165 dated 15.12.2012 for Rs. 72640/- was given by the respondent-accused in the year 2012 towards repayment of loan. The view taken by the learned Judge is a possible view. I do not find any perversity or illegality in the order. There is no reason to interfere with the order. Application is dismissed.

(ANUJA PRABHUDESSAI, J.)

CERTIFICATE

Certified to be true and correct as per the original signed judgment/order.