IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.103 OF 2013

Lokmanya Multipurpose Co-operative
Society Ltd .. Applicant

Versus

Aditya Madhav Bam and anr .. Respondents

Mr.Sandesh R. Shukla i/b Mr.Abhay Nevagi and Associates for the applicant.
Mr.Paras Yadav i/b Mr.Rohan Nahar, Advocate for respondent no.1.
Ms.Anamika Malhotra, APP for the Respondent State.

CORAM : ABHAY M. THIPSAY, J.

DATED : 10th MARCH, 2015

P.C. :

1 The applicant – a Co-operative Credit Society-had prosecuted the respondent on the allegation that the respondent had committed an offence punishable under section 138 of the Negotiable Instruments Act. The learned Judicial Magistrate First Class, Pune, after holding a trial, found the respondent not guilty and passed an order of acquittal. The applicant is aggrieved by the said order of acquittal, and is therefore, by the present application, seeking special leave of this Court to file an Appeal therefrom.

2 I have heard Mr.Sandesh R. Shukla, learned counsel for the applicant in support of the application. With his assistance, I have gone through the impugned judgment and other annexures to the application.

3 The case of the applicant, in brief, was that it had disbursed loan of Rs.3,60,000/- to the respondent on 6th November 2007. The loan was disbursed for enabling the respondent to purchase a vehicle. As per the terms and conditions of the loan, should the respondent commit two defaults in paying the agreed instalment, the entire amount of loan together with interest and penal interest would be due. That, the respondent initially paid some instalment, but thereafter, committed a default in the payment. The applicant, therefore, informed the respondent that he had committed a default and that therefore, the entire loan account was required to be closed. The respondent agreed to do so and towards the dues payable by him to the applicant, issued a cheque in the sum of Rs.3,32,000/- which was dishonored, and since the amount thereof was not paid inspite of a demand notice, the complaint came to be lodged.

4 The accused took a number of defences during the trial. He examined himself as a witness for the defence. Additionally, he examined witnesses in defence.

5 The Magistrate doubted the version of the applicant for a number of reasons. It transpired that the father of the respondent was working with the applicant, and that, the loan had

been disbursed to the respondent while he was in service. It was also revealed that the father of the respondent had some disputes with the applicant, and had therefore, resigned. According to the respondent, the applicant was thereafter insisting that the entire loan amount should be paid at once to which the respondent was not ready, though he was ready to pay the instalments. The case of the respondent was that the applicant had misused a blank signed cheque which had been taken as and by way of security at the time of sanctioning the loan amount.

6 I have carefully considered the matter.

7 The learned Magistrate, among other things, observed that the name of the payee i.e. of the applicant, as appearing on the cheque, was by way of a rubber stamp impression; and that there was a difference between the ink of the rubber stamp impression and the ink used for signing the cheque by the respondent. The Magistrate therefore, thought it quite probable that the cheque had been issued at the time of disbursing the loan.

8 Even otherwise, the theory that the respondent who was unable to pay the installments of the loan would, on his own, come to the bank and would issue a cheque covering the entire amount of loan with interest plus penal interest, knowing fully well that there is no sufficient balance in his account, is difficult to be accepted going by the broad probabilities. Moreover, what is interesting to note is that there is no clear clarification as to *how* the specific figure, that appears on the cheque, was arrived at by the respondent. The emphasis of the learned counsel for the

applicant has been on showing the correctness of the figure by referring to the record available with the applicant bank, but that does not answer the question as to *how* the respondent came to know about this figure, particularly because this figure was never communicated to the respondent in the letter dated 29th September 2008 sent by the applicant to the respondent, requiring him to pay the entire amount.

9 During the course of arguments, much emphasis has been placed by the learned counsel for the applicant on a proposition that 'even if a blank cheque is issued, the drawer would be liable in respect of an offence punishable under section 138 of the Negotiable Instruments Act'. This contention appears to be based on the presumption contained in sections 118 and 139 of the Negotiable Instruments Act. The contention is that in such cases, the drawer would be deemed to have been authorised the payee to put a figure on the cheque and get is encashed. <u>What, however, is ignored is that in such cases, there must be categorical evidence of the manner in which the figure on the cheque was to be arrived at;</u> and that the figure put on the cheque is in accordance with the agreement between the parties. In the instant case, there is no such evidence. Moreover, there is nothing to show that a particular figure was communicated to the respondent by the applicant and that, that is why the respondent put that particular figure accepting the correctness of the interest and the correctness of the penal interest.

10 I, therefore, find no substance in this contention.

11 The doubt felt by the Magistrate about the truth of the version of the applicant cannot be said to be unreasonable or not borne out from the evidence that was before him. The view of the matter as taken by the Magistrate is certainly a possible view. It is well settled that in such a case grant of leave would be futile.

12 Leave refused.

13. Application is rejected.

(ABHAY M.THIPSAY, J)