IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.145 of 2013

Maharudra Hanuman Nagari Sahakari Pat
Sanstha Maryadit .. Applicant
Versus
Baban Barku Nawale and anr .. Respondents

None for the applicant.

Mr.Deepak Thakre, APP for the Respondent State.

CORAM : ABHAY M. THIPSAY, J.

DATED : 27th FEBRUARY, 2015

P.C. :

1 None appears for the applicant when called out.

2 Application is dismissed.

(ABHAY M.THIPSAY, J)

Later on

Mentioned by Mr.Sugandh Deshmukh, Advocate for the applicant.

3 The order of dismissal is recalled, and the application is heard on merits.

4 The applicant is a co-operative Housing Society. It had prosecuted the respondent no.1 on the allegation that he had

committed an offence punishable under section 138 of the Negotiable Instruments Act. The Judicial Magistrate First Class, Nashik, after holding a trial passed an order of acquittal. The applicant being aggrieved by the said order of acquittal, is by the present application seeking leave to Appeal thereof.

5 I have heard Mr.Sugandh Deshmukh, learned counsel for the applicant. With his assistance, I have gone through the application, and the impugned judgment, copy of which is annexed to the application.

6 For the sake of convenience and clarity, the applicant shall hereinafter be referred to as 'the complainant' and the respondent no1 as 'the accused'.

7 The case of the complainant, as can be seen from the complaint, a copy of which is annexed to the application is that it had given a term loan to the accused. That, the accused did not pay the loan within the time limit stipulated, but then, as per the demand of the complainant, gave a cheque in the sum of Rs.27,938/- on 16th February 2006. That, this cheque was dishonored for want of sufficient funds in the drawers account, and since in spite of a demand notice, the amount of the cheque was not paid, the prosecution was launched.

8 The accused took a defence during the trial that the cheque in question had not been issued by him. He denied having signed the same. The accused also raised a dispute about the amount of the loan, and the terms of repayment thereof. The

learned Magistrate observed that no details of the loan allegedly given to the accused were given in the evidence of the complainant's witness. On which date the loan was disbursed, what was the amount of loan, within what period it was to be repaid, was not mentioned by the complainant's witness. The Magistrate also observed that no documents concerning the alleged loan were submitted by the complainant. The Magistrate observed that though the accused had admitted that some loan had been sanctioned in favour of the accused, it could not be construed that the cheque in question had been issued by the accused only for the repayment of the loan. The Magistrate further observed that since the date on which the loan was given, and the date by which it was to be repaid, was not given, whether the recovery of the amount was barred by the law of limitation, was also not clear. The Magistrate, therefore, doubted whether the cheque in question had been issued by the accused, and if at all it was issued, whether it had been issued in discharge of a legaly enforceable debt or other liability. The view of the matter as taken by the Magistrate is a possible view. It is well settled that in such circumstances, grant of leave would be futile.

9 Leave refused.

10 Application is rejected.

(ABHAY M.THIPSAY, J)