

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1065 OF 2013

**SHREE BAHUBALI ZILLA NAGRI SAHAKARI)
PATHSANSTHA MYDT. JAYSINGPUR)...APPELLANT**

V/s.

SHRI SURESH RAJARAM JADHAV & ANR.)...RESPONDENTS

Mr.Manoj A. Patil, Advocate for the Appellant.

Mr.Pramod Kathane, Advocate for Respondent No.1.

Mr.Deepak Thakre, APP for the Respondent - State.

CORAM : ABHAY M. THIPSAY, J.

DATE : 11th FEBRUARY, 2015.

ORAL JUDGMENT :

1 This appeal is directed against the order dated 26th December, 2012, passed by the Judicial Magistrate First Class, at Jaysingpur, in Criminal Case No.132 of 2007 before him, acquitting the respondent no.1, who was an accused in the said

case of an offence punishable under Section 138 of the Negotiable Instruments Act. The order came to be passed under the provisions of Section 256 of the Code of Criminal Procedure (Cr.P.C.).

2 I have gone through the impugned order. The Magistrate recorded that, on that date, i.e. 26th December, 2012, the complainant i.e. the appellant and his advocate, both were absent, inspite of repeated calls. The Magistrate also observed that on the previous date also, the complainant had failed to appear before the court. The Magistrate further observed that the matter had been kept for dismissal, but that, inspite of the same, neither the complainant, nor his advocate appeared in the court. The Magistrate, therefore, passed an order of acquittal, as contemplated under Section 256 of the Cr.P.C.

3 The factual correction of the observations made by the Magistrate has not been challenged. Certainly, the Magistrate was entitled to pass an order of acquittal, in the circumstances, as are

revealed from the impugned order itself. I find that the amount of the cheque is Rs.64,015/-. This is said to be comprising of the principal loan amount of Rs.25,000/- plus interest. The applicant, i.e. the complainant, is a co-operative society. Respondent no.1 is alleged to have issued the cheque in question for the repayment of the part of a loan, which was payable by one Raosaheb Kurane. Respondent No.1 had stood guarantor in respect of the said loan. The transaction in question had taken place in the year 2006.

4 Considering all the relevant aspects of the matter, I do not think that, a case for interfering with the order of acquittal, as passed by the Magistrate, is made out.

5 The Appeal is dismissed.

(ABHAY M. THIPSAY, J.)