

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE**

**CRIMINAL APPLICATION NO.813 OF 2011
WITH
APPLICATION FOR LEAVE TO APPEAL (PVT) NO. 66 OF 2015**

Shrilaxmi Gramin Bigar Sheti
Sahakari Patsanstha Maryadit, Niphad ... **Applicant**
V/s.
Shri.Anil Bakerao Khadtale & Anr. ... **Respondents**

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Ms.Vrushali Raje i/b. P N. Joshi, Advocate for the Applicant.
Mr.Nachiket V. Khaladkar, Advocate for the Respondent No.1.
Ms.Anamika Malhotra, APP for the Respondent/State.

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CORAM : ABHAY M. THIPSAY J.

DATED : 3RD FEBRUARY, 2015

P.C.

1. Heard.
2. As it is decided to hear the application for leave to appeal on merits, the delay is condoned. The application for leave to appeal is taken up for hearing forthwith.
3. The applicant is a Co-operative Credit Society. It had filed a complaint against the respondent No.1 herein alleging commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881. The learned Judicial

Magistrate, First Class, Niphad, after holding a trial, found the respondent No.1 not guilty and passed an order of acquittal. It is, being aggrieved by the said order of acquittal, that the present application, seeking leave to appeal therefrom has been filed.

4. I have heard Ms.Raje for the applicant. I have heard Mr.Khaladkar, the learned counsel for the respondent No.1. I have gone through the impugned judgment and also copy of the judgment that is annexed to the application.

5. For the sake of convenience and clarity, the applicant shall, hereinafter, be referred to as “the complainant” and the respondent No.1 as “the accused”.

6. The case of the complainant, as put forth before the trial Court, was that it had sanctioned a loan in the sum of Rs. 15,000./- to the accused. That, the said loan amount was disbursed to the accused. However, the accused did not repay the installments as agreed. That, ultimately, towards the return of the entire loan, together with interest, the accused issued a cheque in the sum of Rs.18,772/- in favour of the complainant, which was dishonoured and which resulted in the prosecution.

7. The learned Magistrate observed that as per the agreed rate of interest, as mentioned by the complainant itself, the

amount of the loan, together with interest, could not be Rs. 18,772/-, which was the amount of the cheque. The Magistrate observed that even on the basis of the account extract filed by the complainant, the amount of loan together with interest would come to Rs.17,454/-only. The Magistrate observed that admittedly penal interest was charged by the complainant, but there was nothing to show that what was the agreed rate of penal interest, and under what circumstances it should be charged. The Magistrate, thus, held that there were certain other amounts included in the amount of Rs.18,772/-, and that the amount of cheque did not comprise only of the loan amount together with the interest as claimed. The Magistrate, in that context, noted the defence of the accused that the complainant had obtained the blank signed cheque from him at the time of disbursing the loan.

8. The learned counsel for the complainant submitted that the accused was not disputing the receipt of loan and that, therefore, what exactly ought to have been the interest and how the figure of the total amount due and payable by the accused should be arrived at, need not have been considered by the Magistrate. According to her, these are all 'technical aspects' of the matter having no bearing on the decision of the Court on the aspect of finding the accused guilty or innocent with respect to the alleged offence.

9. I am unable to agree with the learned counsel. Arithmetical calculations on the basis of the claim made by the complainant itself can be undertaken by the Magistrate to find out as to what was due and payable by the accused to the complainant on the given date. In fact, when a claim that the amount mentioned in the cheque is excessive is made, the Magistrate would be bound to make the arithmetical calculations which would be obvious and determine this aspect.

10. Since no fault can be found in the conclusion arrived at by the Magistrate that the sum put on the cheque was not shown to be due and payable to the complainant by the accused, the order of acquittal recorded by the learned Magistrate cannot be faulted.

11. This is not a fit case where leave to appeal should be granted.

12. Leave refused.

13. The application is rejected.

14. It, however, be numbered.

(ABHAY M. THIPSAY J.)