

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.346 OF 2014

**M/S.RAHUL URBAN CO-OP. CREDIT)
SOCIETY LTD. BYCULLA, MUMBAI)...APPLICANT**

V/s.

MR.RAVI KRISHNA DAYALKAR & ANR.)...RESPONDENTS

Mr.Pandurang M. Sawant, Advocate for the Applicant.

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

Mr.Ravi K. Dayalkar, Advocate for Respondent No.1.

CORAM : ABHAY M. THIPSAY, J.

DATE : 23rd JANUARY, 2015.

P.C. :

1 The applicant – a co-operative society, had prosecuted respondent no.1 herein, on the allegations of having committed the offence punishable under Section 138 of the Negotiable Instruments Act. The Metropolitan Magistrate, 56th Court, Mazgaon, Mumbai, after holding the trial, held respondent no.1

not guilty and passed the order of acquittal. Being aggrieved by the said order of acquittal, the applicant has approached this court, and he is, by the present application, seeking leave to appeal from the judgment and order of acquittal.

2 The case of the applicant was that it had disbursed loan in the sum of Rs.2,50,000/- to respondent no.1. That, towards the repayment of the said loan, together with the agreed rate of interest, respondent no.1 issued cheque in the sum of Rs.4,09,994/- in favour of the applicant. That, the said cheque was dishonoured for want of sufficient funds in the drawer's account, and since the amount of cheque was not paid, inspite of a demand notice, respondent no.1 was prosecuted.

3 I have heard Mr.P.M.Sawant, the learned counsel for the applicant. With his assistance, I have gone through the application and the annexures thereto. I have carefully gone through the impugned judgment.

4 The learned Magistrate held that, that the cheque in question had been issued in discharge of a legally enforceable debt or liability, had not been proved. The Magistrate observed that there was no entry in any records showing disbursement of loan of Rs.2,50,000/- to respondent no.1. The Magistrate also observed that inspite of categorical challenge given to the applicant's witness in that regard, he did not produce or point out any such entry. The Magistrate also observed that how the figure of Rs.4,09,994/- had been arrived at, was not explained. In paragraph 15 of the judgment, the learned Magistrate observed that if the interest is calculated at the agreed rate, it would be Rs.90,000/-, and therefore, the total amount repayable would be Rs.3,40,000/-. The Magistrate also observed that, a part thereof had been, admittedly, repaid to the applicant by respondent no.1.

5 The doubt felt by the Magistrate upon the truth of the complainant's version is certainly fully justified. I do not find any fault in the reasoning of the learned Magistrate, or with the ultimate conclusion arrived at by him.

6 Leave refused.
The application is rejected.

(ABHAY M. THIPSAY, J.)