

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

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.498 OF 2013  
WITH  
CRIMINAL APPLICATION NO.497 OF 2013**

**RAYAT SARVA SEVA SANSTHA )...APPLICANT**

**V/s.**

**MOHAN DEVU RATHOD AND ANR. )...RESPONDENTS**

Mr.Abhishek Yende, Advocate for the Applicant.

Mr.Mahesh Rawool i/b. Mr.A.B.Avhad, Advocate for Respondent No.1.

Mr.M.R.Tidke, APP for the Respondent - State.

**CORAM : ABHAY M. THIPSAY, J.**

**DATE : 10<sup>th</sup> FEBRUARY, 2015.**

**P.C. :**

1            These two applications can be conveniently disposed of together with this common order as the parties are same and the issues that arise for determination are also the same.

2           The applicant is the original complainant. He had prosecuted respondent no.1 on the allegation that respondent no.1 had committed an offence punishable under Section 138 of the Negotiable Instruments Act. The Judicial Magistrate, First Class, after holding two separate trials, in respect of the two cases filed by the applicant against respondent no.1, passed an order of acquittal in both the cases. Being aggrieved by the said order of acquittal, the applicant is, by the present two applications, seeking special leave to appeal from the said orders of acquittal. For the sake of convenience and clarity, the applicant shall hereinafter be referred to as 'the complainant' and respondent no.1 as 'the accused.' It is not necessary to make separate reference to the facts of the two cases.

3           The complainant is a public trust and also a society registered under the Maharashtra Co-operative Societies Act. It runs a sugar factory. The accused is a contractor. The complainant has engaged a number of such contractors, who are supposed to provide labour, truck, tractors etc. to the complainant.

For enabling the contractors to provide the necessary labour, transport facilities etc., the complainant gives advance to such contractors. The case is that the accused had taken some amounts from the complainant, from time to time, as and by way of advance. The case of the complainant is that, as the accused did not, or could not, fulfill his contractual obligations, he was called upon to refund the amount of advance with interest, which he purported to do by issuing two separate cheques, which got dishonoured, and resulted in prosecution of the accused in two separate cases.

4            Though the Magistrate was satisfied with certain aspects of the complainant's case, the Magistrate observed that the amount put on the cheques was more than the amount said to have been given by the complainant, as and by way of advance. A claim was made before the Magistrate that the additional amount was towards interest and penal interest. But the Magistrate observed that even as per the extract of accounts produced before him during the trial by the complainant, the amount due was not

to the extent of amount put on the cheque. Moreover, the Magistrate observed that there was an agreed rate of interest, which was allegedly intended to be charged, was not established by the complainant.

5           In this context, the Magistrate further observed that, the case of the accused was that blank signed cheques had been taken by the complainant from the accused while disbursing the amount of advance to him. The accused had categorically stated that though the cheques bore his signature, the rest of the matter appearing thereon, was not in his handwriting. The Magistrate concluded that, that the other matter on the cheque had been written by somebody else, and not by the signatory of the cheque, was clear on examining the handwriting thereon. The Magistrate, therefore, observed that, under these circumstances, that the actual amount that was put on the cheque was due and payable by the accused to the complainant on the given date, was needed to be established, and that, the responsibility of establishing it was on the complainant.

6           The reasoning of the Magistrate does not seem to be suffering from any illegality or impropriety. Merely because a case was made out that, some amount was, in all probability, due and payable by the accused to the complainant, the Magistrate could not have held the accused guilty of an offence punishable under Section 138 of the Negotiable Instruments Act. The legal position, as understood by the Magistrate, namely that, for holding the accused guilty, it should be shown that the entire amount mentioned in the cheque was due and payable, is correct.

7           In this view of the matter, grant of leave would be futile.

8           Leave refused.

9           The applications are rejected.

**(ABHAY M. THIPSAY, J.)**