

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

CRIMINAL APPLICATION NO. 334 OF 2016

DEOGIRI NAGARI SAHAKARI BANK LTD.
VERSUS
DIVYA MUSIC CENTRE,
PROPRIETOR SANTOSH KARBHARI TRIBHUVAN

...

Advocate for Applicant : Mr. Swapnil D. Tawshikar.

Advocate for Respondent : Mr. R. O. Awasarmol.

...

CORAM : **INDIRA K. JAIN, J.**

DATE : 20th April, 2016.

P.C.:

. By this application under Section 378 (4) of the Code of Criminal Procedure Applicant / original Complainant seeks leave to appeal against the judgment and order dated 20th October, 2015 passed by the learned Judicial Magistrate First Class, Aurangabad in S.C.C. No.1661 of 2011. By the said judgment and order learned Magistrate acquitted the Accused of the offence punishable under Section 138 of the Negotiable Instruments Act.

2 Heard the learned counsel for parties. Perused impugned judgment and order.

3 It can be seen from the findings recorded by Trial Court that only point which is negated by Trial Court is regarding authority

of Mr. Deepak Kulkarni, Branch Manager of the bank who filed his affidavit in lieu of evidence in support of complaint. It appears that resolution authorizing Deepak Kulkarni was passed by the Board of Directors. Copy of resolution was placed on record but it was not proved. As document was not proved Trial Court came to the conclusion that CW-1 was not authorized to file his affidavit in lieu of evidence and discarded his evidence.

4 With the assistance of learned counsel for parties this Court has gone through the material placed on record. Learned counsel for Applicant referred to question 2 asked to Accused under Section 313 of the Code of Criminal Procedure. It relates to authority to Deepak Ambadas Kulkarni, Manager of the Bank. Accused has admitted that Deepak Kulkarni was duly authorized on behalf of bank.

5 In view of an unequivocal admission of Accused this Court finds that Applicant has an arguable case. Hence the following order –

ORDER

- I. Criminal Application No.334 of 2016 is allowed.
- II. Leave granted.

- III. Appeal is **Admitted**.
- IV. Action under Section 390 of the Code of Criminal Procedure stands dispensed with.
- V. Call record and proceedings.

[INDIRA K. JAIN, J.]

ndm