

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.718 OF 2015

Maharashtra State Housing Finance
Corporation, Earth Complex,
Adalat Road, Aurangabad,
Through: its Assistant Inspector,
Shri Uddhav s/o Sheshrao Khandagale,
Age-50 years, Occu:Service,
R/o-Earth Complex, Samarth Nagar,
Aurangabad.

...APPLICANT
(Orig. Complainant)

VERSUS

Laxminarayan Rathod,
Age-48 years, Occu:Business,
R/o-Shivneri Society, Gangapur,
Tq-Gangapur, Dist-Aurangabad.

...RESPONDENT
(Orig. Accused)

...
Mr. Sanjay D. Kotkar Advocate for Applicant.
Mr. B.V. Dhage Advocate for Respondent.
...

CORAM: A.I.S. CHEEMA, J.

DATE : 2ND MAY, 2016

ORAL ORDER :

1. Heard learned counsel for the Applicant –

original complainant and learned counsel for the Respondent – original accused.

2. Learned counsel for the Applicant submits that the Applicant-complainant is Housing Finance Corporation and Respondent had taken housing loan, regarding which the cheque issued by the Respondent bounced and thus notice was issued and when amount was not paid, offence took place and complaint came to be filed. Learned counsel submits that the complainant is Government Undertaking and suffered various difficulties while prosecuting the complaint because the earlier officer who was in the knowledge of facts, had to be removed from service and subsequent officer got transferred at the last moment. The third officer gave evidence but the cross examination of the witness was misplaced by the trial Court and subsequently he was again called and his evidence was recorded. It is stated that the complainant had filed copies of documents

regarding advancement of loan, copies of which have been filed with this Application in the High Court. It is stated that those documents were before the trial Court but the trial Court wrongly recorded that documents are not filed. He states that because of the difficulties of the Corporation, the documents remained to be proved but they were filed and the case of the complainant could not have been doubted.

3. Learned counsel for the Respondent-accused states that legally recoverable debt was outstanding of Rs.60,000/- was not established and thus according to the counsel, the trial Court rightly acquitted the accused. The learned counsel is supporting the Judgment of the trial Court.

4. Going through the material, what appears is that the trial Court has weeded out certain documents, which can be seen from the original record and proceedings. The Judgment was of 2006

and this Criminal Application came to be filed in 2015 after the delay condonation application was allowed.

5. Looking to the fact that complainant is a Corporation and the basic documents for proving offence under Section 138 of the Negotiable Instruments Act like the cheque, the copy of notice, the memo regarding bouncing of cheque were proved on record, it appears necessary to reconsider the reasons recorded by the trial Court for acquittal of the accused. There is an arguable case.

6. As such leave is granted. The Application is allowed. Application be converted into Appeal.

7. Appeal is **Admitted..** Mr. Dhage, learned counsel waives notice for Respondent, after admission of the Appeal.

8. Action under Section 390 of Cr.P.C. be taken against Respondent-accused in the trial Court. While admitting the Respondent-accused to bail, trial Court shall add condition that Respondent-accused shall mark his presence in the trial Court every three months till disposal of the present Appeal. The trial Court shall send yearly report of compliance in January, regarding appearance of the Respondent-accused.

9. The Respondent-accused shall appear before the trial Court on 16th May 2016 for compliance of the above directions.

10. Printing dispensed with. Paper Book be got prepared.

[A.I.S. CHEEMA, J.]