

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.834 OF 2015

Mahavir Urban Co-operative
Society Ltd.

..Applicant

Versus

Mahendrakumar Kanhaiyyalal
Jain

..Respondent

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Mr.S.S.Bora, advocate for applicant

Mr.K.C.Sant, advocate for respondent - sole

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CORAM : M.T. JOSHI, J.

DATE : MARCH 01, 2016

PER COURT :

Heard both sides.

2] Aggrieved by the acquittal of the respondent/
accused from the offence punishable under Section
138 of the Negotiable Instruments Act vide the
impugned judgment and order dated 2nd January, 2015
passed by learned Judicial Magistrate F.C. (2nd
Court), Jalgaon in S.C.C. No.3061 of 2003, the
original complainant wants to prefer an appeal and

therefore, present application for grant of leave to file appeal, is filed.

3] Upon hearing both sides, it appears that present applicant/complainant had failed to examine necessary witnesses to prove the documents regarding grant of loan to the present respondent/accused.

4] It is the contention of learned counsel for the applicant that because of the above lacuna, the respondent/accused has taken advantage by filing the documents regarding another loan. He submits that the learned Judicial Magistrate F.C. has committed mistake in observing that the documents were not produced. In fact, the documents were produced, but were not proved. He further submits that an amount of Rs.72,16,911/- of the Society would be lost due to the negligence of the trial Court advocate.

5] Considering the facts on record, without making any comment on merit of the case, leave to file appeal is hereby granted. Present application for grant of leave to file appeal is therefore allowed.

6] The appeal be registered according to the due procedure of law.

7] The appeal is admitted.

8] Heard.

9] For the reasons stated forwarded herein above, the appeal stands allowed. The impugned judgment and order passed by learned Judicial Magistrate F.C. is hereby set aside.

. Instead, the matter is remanded back to the learned Judicial Magistrate F.C..

10] The learned Judicial Magistrate F.C. shall allow the present appellant/complainant to produce the evidence, if any, within a period of three months from the date of appearance of the parties.

11] The respondent/accused also would be at liberty to furnish evidence, if any, in rebuttal, thereafter.

12] The appeal stands disposed of accordingly.

13] Both the parties are directed to appear before the learned Judicial Magistrate F.C. on 6th April, 2016.

14] Parties to act on authenticated copy of this order.

sd/-

[M.T. JOSHI, J.]

kbp