IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1465 OF 2013

Shri Sai Arihant Urban Co-operative
Credit Society Limited, Shirdi,
Taluka Rahata, Dist. Ahmednagar,
through its Manager
Shri Gorakshnath Nivrutti Dighe,
Age: 45 years, Occu: Service,
R/o Shirdi, Tq. Rahata,
District Ahmednagar ..APPLICANT
(Orig. complainant)

VERSUS

Shri Shivaji s/o Baburao Shirsath,
Age: Major, Occu: Business,
Proprietor of Shirsath Agency,
R/o Vitthalwadi, At Post Shirdi,
Tq. Rahata, Dist. Ahmednagar ..RESPONDENT
(Orig. accused)

Mr H. F. Pawar, Advocate for applicant

CORAM : N.W. SAMBRE, J.

DATE : 27th September, 2016

ORAL ORDER :

The respondent-accused is acquitted of an offence punishable under section 138 of the Negotiable Instruments Act, by judgment and order dated 30th November, 2012, rendered by Judicial Magistrate First Class, Rahata. As such, present application for grant of leave to appeal against acquittal.

2. Mr Pawar, learned Counsel appearing on behalf of the applicant has strenuously urged that this Court should consider the claim of the

applicant, having regard to the fact that it being a credit co-operative society, is holding money of general public in trust and as such should be given an opportunity to adduce fresh evidence by remanding the matter back to the learned Trial Court. He would then urge that the loan as was obtained by the respondent-accused from the applicant-society is not in dispute and as such, in view of presumption under sections 118 and 139 of the Negotiable Instruments Act, the complaint of the applicant ought to have been either allowed or appropriate opportunity to lead additional evidence should have been granted.

3. With the assistance, I have perused the order of acquittal recorded by the learned Magistrate. In support of the order of acquittal, it is observed by the learned Magistrate that the cheque for an amount of Rs.6,00,000/- drawn on 25th January, 2006 was issued as against the loan transaction, however, neither the loan transaction nor the vouchers depicting the payment of loan amount to the respondent-accused is placed on record. Leave apart above, complainant's witness no.1, who at the relevant time was working as Manager-cum-Recovery Officer, was not authorized by the complainant society to depose on its behalf, at least no such authorization could find place on record.

4. Apart from above, neither the loan application nor the extract of loan account was proved by examining appropriate witness in support thereof.

5. In view thereof, in my opinion, the findings of acquittal as recorded by the learned Magistrate are based on the evidence as was brought before him and no illegality could be noticed therein. Criminal Application for leave to appeal as such fails and stands rejected.

(N.W. SAMBRE, J.)

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