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

CRIMINAL APPLICATION NO.1743 OF 2015

Dena Bank,
Navi Peth Branch, Jalgaon,
through it's Manager

..APPLICANT

VERSUS

Khan Abdul Gafar Nihar Khan,
Age : Major, Occ. Service,
R/o 2, Rubi Apartment, Wing-A,
Shirsoli Naka, Rahimnagar,
Shirsoli Road, Jalgaon

..RESPONDENT

Mr S.V. Adwant, Advocate for applicant;
Mr T.A. Quadri, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 21st March, 2016

ORAL ORDER :

By the present application, the applicant - complainant, a nationalized bank, seeks leave to appeal against the judgment and order of acquittal rendered by Judicial Magistrate First Class (IInd Court), Jalgaon, on 7th October, 2014, in Summary Criminal Case No.5700 of 2006, whereby the respondent-accused is acquitted of the offence punishable under section 138 of the Negotiable Instruments Act.

2. The facts, as are necessary for decision of the application, are as under :-

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3. The respondent – accused was sanctioned and disbursed a loan of Rs.80,000/-, by the applicant Bank, which he had failed to repay, resulting into issuance of a demand notice. The respondent as such issued cheque dated 25th October, 2006 for Rs.25,000/-, drawn on State Bank of India, Jalgaon. The said cheque was dishonoured, with an endorsement “funds insufficient” on 26th October, 2006, resulting into issuance of notice under section 138 of the Negotiable Instruments Act on 11th January, 2006. The respondent received said RPAD notice on 2nd November, 2006 and as the amount was not paid, criminal complaint bearing Summary Criminal Case No.5700 of 2006 came to be filed.

4. The complaint was presented through one Vivekanant Pawar, who was authorized by the Bank to file the said complaint. Upon verification, process came to be issued against the accused and the trial proceeded further. Exh.38 – original cheque, Exh.39 cheque return memo, Exh.40 registered post A.D. certificate of notice, Exh.41 under posting certificate, Exh.42 postal acknowledgment, Exh.43 – the letter dated 3rd August, 2006 and Exh.44 authority letter dated 14th December, 2009, are relied upon by the applicant bank. Initially, in support of the complaint, Vivekanant P. Pawar examined himself. As he was transferred, Puranlal Govinddas Verma adduced evidence at Exh.19 and after the transfer of Puranlal Verma, Jagdish Patil (Ahire) - authorized person of the Bank adduced evidence at Exh.31. These witnesses deposed in support of the claim of the Bank.

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5. Learned Magistrate, upon considering the fact that none of the above referred persons were authorized to depose on behalf of the applicant – bank, in absence of specific authorization, has acquitted the respondent – accused by judgment and order dated 7th October, 2014.

6. In the above background, Mr Adwant, learned Counsel appearing on behalf of the applicant would strenuously urge that the applicant, a nationalized bank, is entitled to conduct its business in accordance with the provisions of the Bankers Books Evidence Act, 1891. He would then submit that an authorization in favour of the employee of the Bank to depose in support of the case is by virtue of authorization by the Bank Manager to that effect. According to him, the law laid down by the Apex Court in the matter of **Haryana State Cooperative Supply and Marketing Federation Limited vs. Jayam Textiles and anr.**, reported in **(2014) 4 SCC 704**, particularly paragraphs 6 and 7, is required to be appreciated. He then relied upon paragraph 3 of the judgment of the Apex Court, in the matter of **Samrat Shipping Company Pvt. Ltd. vs. Dolly George**, reported in **2002 (9) SCC 455**. The sum and substance of the submission is, even if the authorization in the form of either power of attorney or resolution by the board of directors is not placed on record, the specific averment in the complaint, particularly in the last paragraph states that the same was filed on behalf of the nationalized bank by a competent officer. He would submit that in the matter of Haryana State Cooperative Supply and Marketing Federation Limited (supra), the Apex Court has given opportunity by remanding the matter back to the Court below, so as to

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place on record the documents as were canvassed in the said case, i.e. authorization by the board of directors. He would submit that the learned Magistrate ought to have given an opportunity to the applicant to place on record such authorization, the present applicant being a nationalized bank, holding the amount of public at large in trust. He would then submit that in case the accused disputes the authority, an opportunity should be given to the complainant and not the dismissal of the complaint should be taken recourse to. He would draw support from the judgment of the Apex Court in the matter of Samrat Shipping Company Pvt. Ltd. (supra).

7. Mr Quadri, learned Counsel appearing on behalf of the respondent would submit that in the case in hand authorization is produced, however, the same was not in the form of a letter issued by the Bank Manager, who in law or under the Rules was not competent to do so. According to him, the learned Magistrate was right in dismissing the complaint and acquitting the accused, particularly having appreciated the conduct of the applicant.

8. With the assistance, I have perused the complaint and other documents which are placed on record. It is to be noted that initially the complaint came to be filed through the officer of the bank, namely, Vivekanant Pawar. The verification given by Vivekanant Pawar nowhere speaks of any authorization in his favour, so did the complaint. Perusal of the complaint depicts that, but for a statement that the complaint is filed for and on behalf of the nationalized bank by a competent officer, nothing is placed on record in support thereof. The record then depicts that the

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senior manager of the bank has authorized said Mr Pawar on 9th December, 2006 to file a criminal complaint against the accused. However, it is not brought on record as to under what authority the said communication is issued by the said senior manager and whether senior manager, as per Rules, is competent to issue such authorization.

9. It is not in dispute that the business of the nationalized bank is under the control of its board of directors and there is no resolution or any power of attorney given in favour of any of the employees who have tried to depose in support of the Bank. If the evidence of the witnesses of the bank, namely, Puranlal Verma, Sanjeevkumar Shrivastava and Jagdish Patil (Ahire) is perused, there is hardly any material on record to depict that all these witnesses were authorized to file a complaint or to depose on behalf of the bank. The provisions of Bankers Books Evidence Act are hardly of any assistance, particularly in the matter of presentation of complaint and deposing for and on behalf of the bank. In the case of Haryana State Cooperative Supply and Marketing Federation Limited (supra), what was pleaded in complaint was that there was authorization given by the board of directors of federation in favour of the complainant and the power of attorney that was given to the complainant was submitted in C.C. No.1409 of 1999. The said facts were not denied by the accused person. In the present case, there is hardly any foundation, but for the authorization given by the senior manager, that too without any authority. The said senior manager is also not examined so as to spell out his source of power to issue such authorization. As such, the law laid down by the

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Apex Court in the matter of Haryana State Cooperative Supply and Marketing Federation Limited (supra), so also the law laid down in the matter of Samrat Shipping Company Pvt. Ltd. (supra), which is on the same line, will hardly be of any assistance.

10. In the result, the application for grant of leave to file appeal fails and stands rejected. Leave refused.

(N.W. SAMBRE, J.)

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