IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2160 OF 2014

Kiskinda Bapu Kale,
Age-39 years, Occu:Agri. &
Household, R/o-Kallamb,
Tq-Kallamb, Dist-Osmanabad.

...APPLICANT
(Orig. Complainant)

VERSUS

Sau. Sushilabai w/o Navnath Sawant,
Age-48 years, Occu:Agri.,
R/o-Kalpana Nagar, Kallamb,
Tq-Kallamb, Dist-Osmanabad.

...RESPONDENT
(Orig. Accused)

...

Mr.M.S. Karad Advocate with Mr. S.S. Thombre Advocate for Applicant.
Mr.M.P. Tripathi Advocate for Respondent.

...

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

DATE : 26TH APRIL, 2016

ORDER :

1. Learned counsel for the Applicant- original complainant submits that this Appeal is against

acquittal. According to him the offence under Section 138 of the Negotiable Instruments Act, 1881 ("N.I. Act" for short) was clearly established as the cheque issued by the Respondent-accused when presented, bounced and the Respondent should have been convicted. According to the counsel, the reasonings recorded by the trial Court for dismissal of the complaint were not maintainable. It is stated that the document Exhibit 25 was wrongly treated by the trial Court as withdrawal slip and not cheque.

2. The learned counsel for the Respondent-accused opposes and states that the reasonings recorded by the trial Court were correct and the acquittal was justified.

3. With the assistance of counsel for both sides, I have gone through the contents of Exhibit 25 which the complainant wants to rely on as a cheque. The document is of "Lokshradha Nagari

Sahakari Patsanstha Ltd.". The printed wordings in the document are as under:

LOKSHRADHA

DATE:..........

Not for bank cheak clearing

Name................

Pay to................

Rupees..............

Rs.....

A/C. NO.
A/C TYPE

LOKSHRADHA NAGARI SHAKARI PATSANSTHA LTD.

HEAD OFFICE SHIVAJI COLLAGE ROAD, BARSHI-413411

4. Admittedly it was an account with the Patsanstha. As per Section 138 of the N.I. Act, a cheque has to be drawn by a person on an account maintained by him with the Banker for payment of money to another. If such cheque is returned by the "Bank" unpaid, the Section gets attracted. Definition of cheque is given in Section 6 of the N.I. Act. In this matter, I am not concerned with

the explanations below the definition. The relevant part of Definition of "Cheque" reads as follows:-

> "Cheque- A "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form."

. It shows that cheque is a bill of exchange. Now if Section 5 of the N.I. Act is perused, it defines "bill of exchange" as under:

> "5. Bill of exchange.- A "bill of exchange" is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.
>
> A promise or order to pay is not "conditional", within the meaning of this section and section 4, by reason of the time for payment of the amount or any installment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain.
>
> The sum payable may be "certain", within the

> meaning of this section and section 4, although it includes future interest or is payable at an indicated rate of exchange, or is according to the course of exchange, and although the instrument provides that, on default of payment of an installment, the balance unpaid shall become due.
>
> The person to whom it is clear that the direction is given or that payment is to be made may be a "certain person", within the meaning of this section and section 4, although he is mis-named or designated by description only."

5. Keeping such definitions in view, one comes across cheques which are used in the Banks with wordings like:-

"
State Bank of ....
IFSC CODE:..............

Valid for 3 months from the
date of instrument

Date:

PAY...OR ORDER

RUPEES................

Rs. [ ]

A/C. NO........................ Not Over Rs..........

Multi city Cheque............

....

(Please sign above)"

6. Provisions of the Banking Regulation Act, 1949 provide as to what is "banking", "banking company" etc. Learned counsel for the Applicant is unable to show that the Patsanstha is a Bank. Similarly looking to the definition of "cheque" and "bill of exchange", the document Exhibit 25 cannot be said to be a cheque and the trial Court was right in its observation that it is not a cheque. Trial Court observed that as per R.B.I. guidelines, Patsanstha cannot issue cheque and it has no right to do so and the document Exhibit 25 was withdrawal slip. If Exhibit 25 is perused, on one side in fine printing it is mentioned that "Not for bank cheak clearing". Apparently Patsanstha which does not even know spelling of "cheque" has issued some document to the depositor for its internal functioning. That will not help the complainant.

7. This Appeal is against acquittal and

looking to the reasonings recorded by the trial Court, it is possible view of the material which was brought before the trial Court. There is no reason to interfere in this Application so as to grant leave against the acquittal or to admit the Appeal.

8. For the afore-stated reasons, the Application is rejected.

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

asb/APR16