IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO. 2447 OF 2007

1. Pravin S/o Devidas Deshmukh,
   Age : 43 years, Occ. Business,
   R/o. Durga Colony,
   Opp. J.E.S. College, Jalna.

2. Anant S/o Pandit Sali,
   Age : 37 years, Occu. Service,
   R/o. Agrasen Nagar,
   Near J.P.C. Colony, Jalna.

3. Ravindra S/o Laxman Ghotankar,
   Age : 35 years, Occu. Service,
   R/o. C/o. Deogiri Nagari Pat Sanstha,
   Old Jalna, Jalna.

4. Vijay S/o Pandit Sali,
   Age : 40 years, Occu. Business,
   R/o. Agrasen Nagar, Near Ram Nagar,
   Jalna.

5. Punam Prakash Kadu,
   Age : 33 years, occu. Household,
   R/o. C/o. Shrimant Narayan Mohite,
   Opp. Shital Kirana Store,
   Gandhi Nagar, Jalna. **Petitioners...**

Versus

Rajureshwar Nagri Sahakari Pat Sanstha Maryadit,
Near Nar-Narayan Mandir, Badi Sadak, Jalna,
through its Chairman, Manoj S/o. Shripal Jain
Age : 41 years, Occu. Service,
R/o. House No. 45, C Line, Balaji Nagar,
Near Jalna Road, Aurangabad. **Respondent...**
(Orig. Complainant)

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Mr Vijay Sharma, Advocate for the petitioners
None for respondent.

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CORAM : V. K. JADHAV, J.
DATE : 25TH NOVEMBER, 2016.

<u>ORAL JUDGMENT</u> :-

1. Being aggrieved by order dt. 03.07.2007 passed by learned Chief Judicial Magistrate, Jalna below Exh. 1 & 24 in R.C.C. No. 286 of 2007, the original accused in R.C.C. No. 286 of 2007 have preferred this Criminal Application.

2. Brief facts giving rise to the present application are summarized as under:

The petitioner No. 5 has availed a personal loan of Rs. 50,000/- from the respondent-original complainant. The petitioner No. 1 was the former secretary of the complainant-Society and the petitioner No. 5 – borrower is his close relative. Petitioner No. 5 did not repay the said amount for sometime, the respondent-original complainant has, therefore, filed a complaint bearing R.C.C. No. 286 of 2007, before the learned Chief Judicial Magistrate, Jalna alleging therein that the petitioner No. 5 is not traceable at her old address and on making inquiry, it was revealed that, the witnesses who put their signatures on the loan form, shown their ignorance about such loan proposal and also denied their respective signatures on the loan form as a witnesses. It is also alleged in the complaint that, the petitioner No. 5–original accused has cheated the respondent-complainant with the help of other petitioners-accused by executing bogus documents. Thus, the petitioners-accused have committed offence of preparation of false documents, cheating and criminal breach of trust in furtherance of their common intention and as such, caused heavy financial loss to the complainant-Society.

3. Learned Magistrate has directed the respondent-complainant to adduce evidence before the issuance of the process as provided u/s 202 of Code of Criminal Procedure. Accordingly, the complainant has examined in all three witnesses including himself and also filed on record all the relevant documents. However, the original accused No. 1 appeared through his counsel and filed application Exh. 24 thereby requesting to consider certain documents submitted along with the application. The complainant has raised strong objection to the said application. It is contended that, the accused have no right to participate in the proceedings meant for issuing process. The ld. Chief Judicial Magistrate, Jalna has rejected the application Exh. 24 as aforesaid, however, after considering the evidence of the complainant and his witnesses and on perusal of the documents filed by the complainant, issued process against the

petitioners for offence punishable u/s 468, 471, 406, 420 r/w 34 of the Indian Penal Code. Hence, this Criminal Application.

4. Learned counsel for the petitioners submits that, due to some financial problems, the petitioner No. 5 could not repay the loan amount regularly. He further submits that, the petitioner No. 5 herein had made an application dt. 01.02.2007 thereby requesting the complainant/Society to grant her sufficient time for repayment of loan and also requested to allow her to repay the said loan amount in easy installments. The request was also made to issue a fresh extract of the loan amount, however, the respondent-complainant has not taken any cognizance of the same. Thereafter, the respondent-complainant issued another notice dt. 23.04.2007 thereby directing the petitioner No. 5/borrower to furnish fresh address and to pay the entire loan amount along with interest. In reply to the said notice on 10.05.2007, the petitioner No. 5/borrower has deposited an amount of Rs. 10,000/- and demanded the extract of her loan amount as the amount shown outstanding against her name was appearing to be exorbitant. The ld. counsel further submits that, on 04.06.2007 the petitioner No. 5/borrower has deposited the entire outstanding amount of Rs. 99,000/- and the receipt issued thereof is placed on record. The ld. counsel submits that, the petitioner No. 5/borrower

has deposited the entire outstanding amount under protest. The ld. counsel submits that, the petitioner No.5/borrower and the other petitioners never denied their liability nor executed any false documents as alleged in the complaint. The ld. counsel submits that, subsequent to the loan transaction as stated in the complaint, the relations between the Chairman of the society - Mr. Manoj Jain and the petitioner No.1-Pravin Deshmukh became strained. The ld. counsel submits that, the complaint is the outcome of the strain relations and out of vengeance the complaint was filed. The ld. counsel submits that, even accepting all the allegations made in the complaint as it is and considering the unimpeachable document like a receipt issued by respondent-original complainant about the satisfaction of the entire outstanding amount, no case is made out for issuance of the process and continuation of the further proceedings in the aforesaid case would be an abuse of the court process.

5. None appears for respondent-sole though duly served.

6. On careful perusal of the complaint, it appears, that the respondent-original complainant has made allegations about causing of a pecuniary loss, psychological stress, mental agony and harm to the image, prestige and reputation of the respondent-original

complainant/Society. It is nowhere alleged in the complaint that, the petitioners-original accused have denied their liability so far as personal loan availed by petitioner No. 5 from the respondent society. There is no reference in the complaint as to what are those false documents prepared by the petitioners for availing personal loan. There are no allegations in the complaint as to how the respondent-original complainant/society sustained a wrongful loss and the petitioner No. 5/borrower a wrongful gain. The petitioners No. 1 to 4 since never denied their liability, the ingredients of criminal breach of trust are also not attracted against them. So far as the inquiry u/s 202 of Code of Criminal Procedure is concerned, the scope of such inquiry is extremely limited and the probable defence of the accused cannot be considered. However, the documents placed on record which are not denied by the respondent/original complainant unmistakably point out that, the petitioner No. 5 has deposited the entire outstanding amount and the receipt thereof has been issued by the respondent-original complainant. The respondent-original complainant cannot deny this document and same establish unimpeachable and unassailable circumstances, which can be converted into evidence. The respondent-original complainant though duly served has, therefore, not bothered to appear in this case and explained about the said receipt issued in favour of petitioner

No. 5. In these facts and circumstances of the case, as discussed above, the impugned order of issuance of process is not sustainable in law and further proceedings in the aforesaid case would be an abuse of court process. In view of this, the criminal application is allowed in terms of prayer clause 'C'.

7. Rule is made absolute in the aforesaid terms.

8. Criminal Application is accordingly disposed of.

[V. K. JADHAV]
JUDGE