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

Criminal Application No. 3175 of 2015

District : Ahmednagar

Padmavati Gramin Bigar Sheti
Pat Sanstha, Bhorwadi,
Taluka & District : Ahmednagar,
through its Designated person
Shri Balasaheb Raghu Bhor,
Age : 40 years,
Occupation : Service,
R/o. Bhorwadi,
Taluka & District : Ahmednagar. .. Applicant
(Original complainant)

versus

1. Ganesh Nivrutti Rade,
   Age : 34 years,
   Occupation : Business,
   R/o. 3/4, New Sagar Colony,
   Shivneri Chowk,
   Taluka & District : Ahmednagar. .. Respondents
   (No.1 - Original accused)
2. The State of Maharashtra.

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Mr. R.K. Temkar, Advocate, for the applicant.

Mr. S.R. Andhale, Advocate, for respondent no.1.

Mr. D.V. Tele, Addl. Public Prosecutor, for respondent no.2.

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CORAM : N.W. SAMBRE, J.

DATE : 15TH MARCH 2016

COURT'S ORDER :

1. Respondent no.1 herein - original accused is acquitted of the offence punishable under Section 138 of the Negotiable Instruments Act 1881, by order dated April 18, 2014 in Summary Trial Case No. 1325/2009, passed by the learned Judicial Magistrate (F.C.), Court No.3, Ahmednagar. As such, the present application at the behest of the original complainant under Section 378(4) of the Code of Criminal Procedure 1973.

2. The present applicant claimed that the respondent - original accused has obtained a loan and, as such, towards guarantee furnished a cheque which was dishonoured resulting into initiation of the proceedings under Section 138 of the Negotiable Instruments Act. The respondent came to be acquitted from the said offence on various grounds amongst other, that the resolution based on which the complainant was authorized by the Cooperative Bank to file proceedings, was not true.

3. Mr. Temkar, the learned Counsel for the applicant, while trying to make out a case for grant of leave to appeal, would submit that the presumption as is in favour of the present applicant, that the cheque in question was issued towards legally enforceable debt is not rebutted by the respondent - original accused. So as to substantiate the said contention, he has relied upon cheque in question at Exhibit 30, memo issued by the

Bank at Exhibit 32, notice under Section 138 of the Negotiable Instruments Act at Exhibit 28 and acknowledgment of notice at Exhibit 29.

4. According to the learned Counsel for the applicant, Exhibit 36, the extract of the loan account, speaks of the admitted debt for which the cheque was issued and as such according to him, the learned Magistrate has committed an illegality in acquitting the accused.

5. Mr. Andhale, the learned Counsel for respondent no.1 - original accused would urge that the accused has denied is liability to pay the amount as no such loan was obtained by him. He would submit that the fact as regards the issuance of cheque and the same was towards an admitted debt of loan was not at all proved and submits that the application be dismissed.

6. With the assistance of the learned Counsel for the parties, I have perused the judgment delivered by the learned Magistrate along with the record and proceedings.

7. At the outset, it is required to be noted that Exhibit 47 is a copy of Resolution No.6 authorizing the complainant to file a complaint. Copy of the said Resolution is placed on record in the form of true copy. However, it does not bear any date. Apart from above, the said fact was not at all proved by examining proper witness or by production of the original register of resolutions. Apart from above, it is required to be noted that the learned Magistrate has noted that the claim that the cheque was issued for an admitted debt was also not proved.

8. In this background, in my opinion, no case for grant of leave is made out.

9. In the result, the Application is rejected. Leave to file appeal is refused. The Application accordingly stands disposed of.

(N.W. SAMBRE)
JUDGE

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