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

CRIMINAL APPLICATION NO. 3612 OF 2016

Mahesh Nagari Sahakari pat Sanstha Ltd.,
Paithan, Through Mahesh Balasaheb Bhusare,
Age: 25 years, Occu: Service as Recovery Officer,
R/o. Paithan, Tq. Paithan,
Dist. Aurangabad

..APPLICANT

VERSUS

1. Asaram s/o Sahebrao Bobade,
Age: 55 years, Occu: Service,
R/o. Wahegaon, Tq. Paithan,
Dist. Aurangabad

2. The State of Maharashtra,
Through Investigating Officer,
Paithan Police Station,
Tq. Paithan Dist. Aurangabad

..RESPONDENTS

Mr R. V. Gore, Advocate for applicant;
Mr N. T. Bhagat, Addl. Public Prosecutor for respondent No. 2

CORAM : N.W. SAMBRE, J.

DATE : 29th September, 2016

ORAL ORDER :

The present applicant, a credit co-operative society, is complainant in S.C.C. No.1428 of 2007. It is claimed that the applicant had advanced loan to respondent no.1 – accused. Towards satisfaction of the debt, the cheque issued by respondent no.1 came to be dishonoured. As such, prosecution was initiated for an offence punishable under section 138 of the Negotiable Instruments Act, which resulted into acquittal.

(2)

2. While trying to make out a case for grant of leave, Mr Gore, learned Counsel appearing on behalf of the applicant would strenuously urge that once Exh.48 – the extract of account of respondent – accused was produced on record, a foundation is laid for establishing that the evidence is admissible as against the accused. Apart therefrom, he would submit that the court below has ignored presumption as is provided under sections 118 and 139 of the Negotiable Instruments Act. While trying to make out a case for remand, he would then urge that once a foundation *qua* Exh.48 is already laid, the applicant be given an opportunity to produce copy of the loan agreement/loan application and the certificate Exh.48 complies with the requirement of provisions of Bankers' Books Evidence Act, 1891.

3. With the assistance of Mr Gore, I have perused the entire order passed by the learned Trial Court acquitting the respondent – accused. I have also perused Exh.48, which is independently placed on record and has also scanned the evidence of D.W.1 Sanjay, the Chief Executive Officer of applicant – society.

4. It is required to be noted that the said witness in categorical terms has admitted that on 31st July, 2007, approximately an amount of Rs.80,000/- was outstanding against the accused *qua* the loan transaction in question. It is then to be observed that the cheque in question as was issued by respondent – accused was for an amount of Rs.2,34,000/-. It is really difficult to digest that as against the loan of Rs.80,000/-, the respondent – accused would have issued a cheque of Rs.2,34,000/-.

(3)

5. Apart from above, Exh.48 i.e. extract of account of respondent – accused very much weighed before the the court below. While scanning the other relevant evidence as is brought on record and while discarding the same, the court below has given lawful reasons.

6. The claim of the applicant – society that it be given opportunity to re-adduce evidence, in my opinion, goes contrary to the very scheme of section 167 of the Evidence Act, as it is not available for the applicant – complainant to fill in lacunae in criminal trial.

7. In view thereof, no case for grant of leave is made out. Criminal Application stands rejected.

(N.W. SAMBRE, J.)

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