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

CRIMINAL APPLICATION NO.4092 OF 2016

The Manta Urban Co-Operative
Bank Ltd., Manta,
Through its Recovery Officer -
Rameshwar s/o Raosaheb Gange,
Age: 40 years, Occ:Service as
a Recovery Officer, R/o. Manta,
Tq. Manta, Dist. Jalna. ..APPLICANT

VERSUS

Maroti Govind Sadavarte,
Age: 71 years, Occ: Pensioner,
R/o. Devthana, Tq. Manta,
Dist. Jalna. ..RESPONDENT

Mr D.R. Irale Patil, Advocate for applicant;

CORAM : N.W. SAMBRE, J.

DATE : 31st August, 2016

ORDER :

In Summary Triable Case No. 2258 of 2008, learned Judicial Magistrate, First Class, Mantha, District Jalna, acquitted the respondent-accused for an offence punishable under Section 138 of the Negotiable Instruments Act, which has prompted the present applicant-complainant to move present application for grant of leave to appeal.

2. Heard Mr. Irale Patil, learned Counsel for the applicant at length. According to him, admittedly the transaction in question for which cheque at Exhibit-51 for an amount of Rs.50357/- dated 17th January, 2008 came to be issued is loan transaction. Original amount of Rs.45,000/- was taken on loan and against the said liability, repayment of Rs.26840/- was made till 27th July, 2008. According to him, the balance amount as remained to be recovered was cheque amount i.e. Rs.50357/-. While drawing my attention to the provisions of Section 138 of the Negotiable Instruments Act, he would submit that even the liability could be extended to not only the cheque amount or the amount borrowed but also other expenses. In addition, he would urge that the provisions of Sections 118 and 139 of the Negotiable Instruments Act, which provide for presumption in favour of the complainant, are ignored by the Courts below and as such, there is

strong case for grant of leave to appeal.

3. With the assistance of learned Counsel for the applicant, I have scanned the judgments analytically. It is required to be noted that C.W. No. 1 Rameshwar Raosaheb Gange, who deposed on behalf of the applicant, has stated that the amount of Rs.45,000/- was borrowed by the respondent in the form of loan for construction of house. It is then claimed that towards full and final settlement, amount of Rs.50357/- was sought to be repaid by the respondent-accused through cheque No.203218 dated 17th January, 2008.

4. It is then required to be noted that as on 31st December, 2007, from the record of bank, it was reflected that the amount of Rs.45357/- was outstanding after repayment of Rs.26840/- and on 31st January, 2008, an amount of Rs.46813/- was outstanding including the interest. The cheque at Exhibit-51 was issued for an amount of Rs.50357/-. In view of above, the issue of presumption as is

sought to be raised herein appears to have been rightly considered by learned Magistrate, particularly in the light of observations made by learned Magistrate in Paragraph-17 of the judgment. Learned Magistrate was of the view that if as on 31^{st} January, 2008, the amount of Rs.46813/- was outstanding against loan account of the respondent, there was no occasion for the respondent-accused to give cheque at Exhibit-51 for an amount of Rs.50357/- (more than amount due) on 17^{th} January, 2008. Though the explanation is offered by learned Counsel for the applicant that the said amount includes administrative and miscellaneous expenses, however, nothing is produced on record to that effect in the testimony of C.W. No.1.

5. As such, the Court below has rightly considered the presumption under the Negotiable Instruments Act and rebuttal thereof.

6. Learned Counsel for the applicant has placed reliance upon the judgment of the Apex Court

in the matter of ***T. Vasanthakumar vs. Vijayakumari*** reported in ***2015 (8) SCC 378*** so as form basis to justify the issue of presumption in favour of the holder of cheque in due course i.e. complainant/applicant herein. It is required to be noted that in the said matter, both the Courts below i.e. Magistrate and Sessions Court upheld conviction of the accused and the High Court, taking recourse to the issue of rebuttal of presumption, has acquitted the accused for the offence punishable under Section 138 of the Negotiable Instruments Act. If the observations made in Paragraph Nos. 6,7,8,10 and 11 of that judgment are considered, the above referred factual matrix is very much absent in the present case. Leave apart the factual matrix, it is to be noted that the presumption was rightly considered in the present case by the Magistrate in favour of the complainant/applicant as cheque at Exhibit-51 was rightly issued in favour of the complainant-bank, however, whether there was lawful liability to that effect is an issue which was evaluated by the

Magistrate and based on the documentary evidence produced by the applicant/complainant as regards outstanding liability of Rs.46813/-, cheque claimed to have been issued for the amount of Rs.50357/-, which was rightly inferred to be not in tune with the legally outstanding liability. As such, the acquittal as ordered, in my opinion, appears to be just and proper. No case for grant of leave to appeal is made out. Leave is refused. As such, application fails and stands rejected.

(N.W. SAMBRE, J.)

Tupe