IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.335 OF 2015

TRIMURTI NAGARI SAHAKARI PAT SANSTHA)...APPLICANT

V/s.

SHRI GULAB ABDUL MOMIN AND ANR.)...RESPONDENTS

Shri Wasim Samlewale i/b. Shri U.R.Mankapure, Advocate for the Applicant.

Shri A.R.Patil, APP for the Respondent - State.

CORAM : ABHAY M. THIPSAY, J.

DATE : 1st FEBRUARY 2016.

P.C. :

1 The applicant is a Co-operative Credit Society and had advanced a loan to the respondent no.1. It had filed a complaint against the respondent no.1 alleging commission of an offence punishable under Section 138 of the Negotiable Instruments Act (N.I.Act). The learned Magistrate, after holding a trial, acquitted the respondent no.1. Being aggrieved thereby, the appellant credit society is seeking special leave of this court to file an appeal therefrom.

2 A notice was directed to be issued to the respondent no.1. The respondent no.1 has been served, but none appears for him.

3 I have heard the learned counsel for the applicant in support of the application. I have gone through the application and the annexures thereto.

4 For the sake of convenience and clarity, the applicant shall hereinafter be referred to as 'the complainant' and the respondent no.1 as 'the accused.'

5 It is an admitted position that the loan that was taken by the accused from the complainant credit society was of Rs.25,000/-. It was taken on 26th March 2002. For repayment of the loan, the accused allegedly gave a cheque in the sum of Rs.49,457/-. This cheque was dishonoured, and thus, the complaint came to be filed.

6 The Magistrate observed that, on the given date, the amount of Rs.49,457/- which was the amount of the cheque, was due and payable by the accused to the complainant, had not been proved. The relevant discussion finds a place in paragraph 9 of the impugned judgment. The claim of the complainant was that the interest on the loan amount was to be paid at the rate of 20 percent per annum. From the calculations that were found in the loan account extract, produced by the complainant before the trial court, it was clear that the interest had been charged at a much higher rate.

7 The learned Magistrate also observed that the amount on the cheque had, clearly, not been put by the accused.

8 The doubt felt by the Magistrate, as to, whether on the given date the accused was liable to pay the amount mentioned in the cheque to the complainant, is proper. The order of acquittal passed by the Magistrate, therefore, does not seem to be suffering from any illegality.

9 There is no merit in the application.

10 Leave refused.

11 The application is rejected.

(ABHAY M. THIPSAY, J.)