

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

APPLICATION FOR LEAVE TO APPEAL (PVT) NO.279 OF 2013

Satara Zilla Nagrik Sahakari Society Ltd.	...	Applicant
V/s.		
Shri.Hemant Tulshiram Suryawanshi & Anr.	...	Respondents

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None for the Applicant.
Mr.A.R.Patil, APP for the Respondent No.2/State.

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CORAM : ABHAY M. THIPSAY J.

DATED : 18th FEBRUARY 2016.

ORAL ORDER :

1. None appears for the Applicant, when called out. This Application is pending since 2013. In these circumstances, it is being decided after going through the same and after hearing the learned Additional Public Prosecutor for the respondent/State.
2. The Applicant – a Co-operative Society – is the original complainant. It had prosecuted the Respondent No.1 herein on the allegation of having committed an offence punishable under Section 138 of the Negotiable Instruments Act. The Metropolitan Magistrate, 43rd Court, Borivali, after holding a trial, acquitted the

Respondent No.1. Being aggrieved thereby, the Applicant is seeking special leave of this Court to file an appeal against the said order of acquittal.

3. 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”.

4. The case of the complainant Society was that a loan in the sum of Rs.2,50,000/- was sanctioned by it to the accused on 04/09/2002. It was to be repaid in 36 equal monthly installments with interest at the rate of 20% per annum. That, the accused did not pay the installments regularly and ultimately towards the full and final settlement of the loan account, issued a cheque in the sum of Rs.3,35,451/-, dated 30/01/2006, which was dishonoured. Since the amount of cheque was not paid inspite of making a demand, the prosecution against the accused was launched.

5. The case of the accused was that he had already paid an amount of Rs.2,93,000/- to the complainant towards the repayment of the loan. According to the accused, the complainant had taken 25 blank signed cheques at the time of sanctioning of the loan. According to him, the amount of the cheque in question was filled in by someone from the complainant and that, that much amount was not at all due and payable.

6. It is clear from the impugned Judgment that in his evidence the witness for the complainant admitted that the complainant had taken 25 blank signed cheques from the accused. He also admitted that a total amount of Rs.2,93,000/- had been repaid by the accused to the complainant. He also admitted that it was somebody from the complainant, who had filled the cheque in question by putting the amount thereon.

7. The Magistrate observed that the complainant failed to prove that the amount mentioned in the cheque was due and payable by the accused to the complainant on the given date. The Magistrate observed that, therefore, the accused could not be held guilty.

8. The reasoning of the Magistrate and the conclusion arrived at by him are proper and legal.

9. The complainant has not chosen to remain present through its counsel and make submissions in support of the Application.

10. Leave refused.

11. Application is rejected.

(ABHAY M. THIPSAY J.)