IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.553 OF 2013

M/s.Dindayal Sahakari Patsanstha
Maryadit .. Applicant
Versus
Kishor Dhanraj Talreja and Anr .. Respondents

Mrs.Prabha Badadare i/b Mr.M.K. Kocharekar, Advocate for the applicant.
Mrs.P.P. Bhosale, APP for the Respondent State.

CORAM : ABHAY M. THIPSAY, J.

DATED : 6th APRIL 2016

P.C. :

1 The applicant – a Co-operative Credit Society – had prosecuted the respondent on the allegation that the respondent had committed an offence punishable under section 138 of the Negotiable Instruments Act. The Judicial Magistrate First Class, Pen, after holding a trial, found the respondent not guilty and acquitted him. Being aggrieved by the said order of acquittal, the applicant Society has filed the present application, seeking special leave of this Court to file an Appeal from the said acquittal.

2 I have heard Smt.Prabha Badadare, learned counsel for the applicant in support of the application. With her assistance, I have gone through the application and the annexures thereto, which include a copy of the complaint, a copy of the impugned judgment and other relevant documents.

3 For the sake of convenience and clarity, the applicant shall hereinafter be referred to as 'the complainant' and the respondent as 'the accused'.

4 The case of the complainant as put forth before the Magistrate was that the accused and one Sunil Agarkar had introduced a scheme that loans should be disbursed to persons who wanted to purchase computers from the accused. Accordingly, these proposals were processed and loans were disbursed to 21 persons. According to the complainant, the accused had undertaken the responsibility of repayment of the loans by the said 21 persons, and had orally promised that on their failure to repay the loan amount, he would be repaying the same. That the persons to whom loans were disbursed committed default in repayment and as such, when the complainant insisted, the accused gave two cheques totally amounting to Rs.8,73,608/- in favour of the complainant. These cheques were dishonored and since inspite of giving a demand notice, the amount thereof was not paid, the accused came to be prosecuted as aforesaid. The learned Magistrate doubted the truth of the version of the complainant primarily for the following reasons.

5 The Magistrate observed that though the case of the complainant was that the loans were sanctioned to 21 persons on the assurance of the accused, the complainant had never got any written assurance or guarantee letter from the accused in respect of the loans proposals.

6 The Magistrate doubted whether the accused was in picture at the time of submitting a loan proposal and believed that there was one Sunil Agharkar who had submitted the loan proposals to the complainant – Credit Society.

7 The complainant's witness one Dattatray had admitted in evidence that the complainant had not done anything to recover the loan from any of the 21 borrowers or from their guarantors. No notice was issued to the accused in respect of the default/s committed by those 21 borrowers. The details of the arrears due from those 21 borrowers were not communicated to the accused, at any time.

8 The complainant sought to get one letter produced saying that it had been given by the accused in favour of the complainant, whereunder he had accepted the responsibility of repayment of the loans disbursed to the said 21 defaulters. That the letter was issued by him, was denied by the accused. This letter was given purportedly in the year 2006, but the cheques were issued only in the year 2011.

9 Apart from the fact that the said letter was not proved at all, it is of some relevance to note that in that letter, the amount of the cheque has not been mentioned and the relevant place is kept blank.

10 The doubt felt by the Magistrate about the truth of the complainant's case was reasonable and justified.

11 The view of the matter, as taken by the Magistrate, is certainly a possible view.

12 It is well settled that in such cases, grant of leave to Appeal would be futile.

13 Leave refused.

14 Application is rejected.

(ABHAY M.THIPSAY, J)