

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO. 245 OF 2017

Dwarkadas Mantri Nagari Sahakari Bank
Ltd, Branch at Georai

.. APPLICANT

VERSUS

Sakharam Gunaji Mane

..RESPONDENT

Advocate for the applicant : Mr. S.V. Natu

Advocate for the respondent : Mr.S.J. Salunke

CORAM : V.L. ACHLIYA, J.

Dated: JULY 05, 2017.

ORDER:

The applicant has moved this application seeking leave to file appeal against the impugned judgment and order of acquittal dated 23/11/2016 passed by the Judicial Magistrate First Class, Georai Dist. Beed in Summary Criminal Case No. 1443/2006. By the impugned judgment, trial court has dismissed the complaint and acquitted the accused for the offence punishable under section 138 of the Negotiable Instruments Act, 1881.

2. Heard the learned counsel for the applicant-complainant and respondent-accused. Perused the record and proceedings of the trial court.

3. Upon considering the submissions advanced in the light of reasons and findings recorded by the trial court, I am of the view that arguable case is made out to be considered in the appeal. Although the trial court has held that the complainant has proved that cheque in question was issued in discharge of legal liability/debt by the accused to the complainant. However, the complaint has been dismissed and accused is acquitted by observing that the complainant has not produced the copy of the resolution to show that witness of the complainant was authorized by the complainant - credit society to depose on their behalf. It is contended by the learned counsel for the applicant that the copy of the resolution was produced on record but the same was not ignored by trial court.

4. In my view, there is case to be considered in the appeal. It is quite settled position of law that authority to depose cannot be delegated by way of authorization. Person has to depose either on the basis of personal knowledge or on the basis of knowledge gathered on the basis of record pertaining to subject matter of the case. In this view, there is case to be considered in the

appeal. I am, therefore, inclined to allow the application seeking leave to file appeal.

5. Appeal be registered and place for admission on 11th July 2017.

[V.L. ACHLIYA, J.]

ysk/*