

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

CRIMINAL APPLICATION NO.1042 OF 2016

Tuljai Nagari Sahakari .. Applicant
Patsanstha Maryadit, Tuljapur

Versus

Dhariyashil Vasant Darekar .. Respondent

Mr.K.K. Kulkarni, Advocate for the applicant

CORAM : V.L.ACHLIYA, J.

DATED : 26.04.2017

P.C. :-

. The applicant has moved this application seeking leave to file appeal against the impugned judgment and order dated 02.01.2016 of acquittal of accuse passed by the trial Court.

2. The trial Court has acquitted the accused for the offence punishable under Section 138 of the Negotiable Instrument Act mainly on the ground that there was no proper service of statutory notice and complaint found to be premature. It is pointed out by the learned counsel for the applicant that the cheque was dishonored on 17.03.2012. Statutory notice was sent by the R.P.A.D. on 31.03.2012. On 20.04.2012 said notice returned with endorsement "unclaimed". The complainant has filed

complaint on 05.05.2012. He, therefore, submits that dismissal of complaint and acquittal of accused is not sustainable in law as there was no proper service of statutory notice and complainant can not said to be premature. He further submits that once the notice was issued by registered post and intimation was given to addressee and addressee failed to accept the cover it is to be presumed that notice has been duly served. He further submits that the endorsement recorded as "Unclaimed" itself amounts to refusal to accept the notice on the part of accuse. He further submits that the complainant has examined four witnesses to prove the case which include three personnel from the postal department. The respondent though served recorded appearance through his Advocate failed to appear when the matter is taken up for hearing.

3. In order to appreciate the submissions advanced I have perused the impugned judgment and order, I am of the view the arguable case has been made out to entertain the appeal. I am, therefore, inclined to pass the following order.

ORDER

- i. The application is allowed in terms of prayer clause-A.

ii. Appeal be registered.

iii. On registration of appeal the notice be issued to the respondent, making it returnable within four weeks.

[V.L.ACHLIYA, J.]