

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

906 CRIMINAL APPLICATION NO.1289 OF 2017

LAXMI BAHUUDDESHIYA SAHAKARI NAGARI
PAT PURVATA SANSTHA MARYADIT, LATUR

.. Applicant

VERSUS

BABA AND COMPANY
THROUGH ITS PROPRIETOR
SATYANARAYAN S/O BHANVARLAL VYAS

.. Respondent

...

Advocate for the Applicant	:	Shri N.D. Kendre
Advocate for the Respondent	:	Shri T.M. Venjane

...

CORAM : PR. BORA, J.

DATE : November 09, 2017

PER COURT :

1. Heard the learned Counsel for the applicant – society and the learned Counsel appearing for the respondent.

2. The learned Judicial Magistrate, First Class at Latur has dismissed the complaint filed by the applicant against the respondent under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the 'N.I. Act') on two counts: first that, in respect of the same transaction, the case, which was earlier filed by the applicant bearing Summary Triable Case No.679 of 2010 was dismissed in Criminal Appeal No.54 of 2013 and the applicant did

not prefer any appeal against the said order, and second that, the applicant has failed in proving that, the amount for which the subject cheque was issued by the respondent was the amount legally recoverable from the respondent.

3. The learned Counsel for the applicant submitted that, the applicant has preferred Criminal Revision Application No.119 of 2017 against the judgment and order passed by the Sessions Court in Criminal Appeal No.54 of 2013 and the said revision is pending before this Court. The learned Counsel for the applicant further submitted that, sufficient evidence was produced by the applicant before the trial Court to substantiate that, the respondent has obtained loan from the applicant and the cheques which were issued by the respondent were towards the arrears on account of the said loan advanced to the respondent. The learned Counsel further submitted that, in the cross - examination, no such specific plea has been raised by the respondent that, there was no transaction between him and the applicant. The learned Counsel submitted that, the trial Court has failed in properly appreciating the evidence on record and the same has resulted in order of acquittal.

4. As against it, the learned Counsel for the respondent

submitted that, it was incumbent on the part of the applicant to sufficiently prove that, the amount for which the cheque was stated to be issued in favour of the applicant was in fact due from the respondent. The learned Counsel submitted that, the applicant did not place on record any document pertaining to the concerned loan transaction and in such circumstances, the learned Magistrate has rightly held that, the applicant failed to prove its case against the respondent. The learned Counsel further submitted that, the applicant had obtained the signed blank cheques from the respondent by way of security and the same were mis-utilized by the applicant. The learned Counsel submitted that, since the applicant failed in proving the arrears towards the respondent, the learned Magistrate has rightly dismissed the complaint filed by the applicant.

5. I have carefully considered the submissions made by the learned Counsel appearing for the applicant – society and the learned Counsel appearing for the respondent. I have perused the impugned Judgment as well as the evidence on record.

6. Insofar as the first ground for rejecting the complaint by the learned Magistrate that, the applicant did not prefer any appeal against the order passed in the Criminal Appeal No.54 of 2013 is

concerned, now it has come on record that, the applicant has preferred the Criminal Revision Application No.119 of 2017 before this Court. The said fact is not disputed by the learned Counsel for the respondent. Insofar as the another ground is concerned, it appears to me that, the said issue has not been properly appreciated by the trial Court. The entire evidence in that regard requires to be reconsidered. From the evidence on record, it is *prima facie* revealed that, the respondent has not denied the transaction between him and the applicant. As is revealing from the record, it was the defence taken by the respondent that, the cheques in question were given by him by way of security. This aspect will also have to be reconsidered in light of the evidence on record. The conclusions as are recorded by the learned Magistrate *prima facie* appears to be based on earlier fact that, the applicant did not prefer any appeal against the judgment passed in Criminal Appeal No.54 of 2013. The entire evidence in the present matter thus would require reconsideration. In the circumstances, I am inclined to allow the present application. Hence, the following order.

ORDER

- i) The application is allowed.
- ii) The criminal appeal be registered in accordance with law. On

registration of the appeal, issue notice to the respondent.
Adv. Shri T.M. Venjare waives service of notice for respondent.
Service complete.

iii) List the criminal appeal for admission after six weeks.

(PR. BORA, J.)

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