

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

901 CRIMINAL APPLICATION NO. 2263 OF 2016

**RAHURI TALUKA VYAPARI NAGARI SAHAKARI PATSANSTHA LTD
VERSUS**

MR BABASAHEB KESHAV PAVAL AND ANR

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Advocate for Applicant : Shri. A.D. Ostwal
Advocate for Respondent No.1 : Shri. V.B. Kale
APP for Respondent – State : Shri. S.R. Yadav

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**CORAM : P.R. BORA, J.
DATE : AUGUST 31, 2017**

PER COURT :

. Heard the learned Counsel appearing for the respective parties.

2. The learned Trial Court has acquitted respondent no.1 of the offence punishable under Section 138 of the Negotiable Instruments Act in a criminal case bearing S.T.C. No.1140 of 2011 filed by the present applicant against him on the ground that, the applicant society has failed in proving that, respondent no.1 was it's member and therefore drawn an inference that the applicant has failed in proving that the cheque in question was issued towards any legally enforceable debt.

3. Shri Ostwal, learned Counsel appearing for the applicant submitted that, sufficient evidence was adduced before the Trial Court proving that, respondent no.1 was the nominal member of the applicant society and as per the bye-laws of the society, the loan was liable to be advanced to the nominal members also. The learned Counsel submitted that, the Trial Court has failed in appreciating the said evidence and has reached to some erroneous conclusion which has resulted in unmeritorious acquittal of respondent no.1.

4. The learned Counsel appearing for respondent no.1 submitted that, the Trial Court has recorded a correct finding and no interference is warranted in the order of acquittal so recorded by the learned Trial Court.

5. Perusal of the impugned judgment shows that, the learned Trial Court has recorded a finding that, the complainant bank has failed in establishing that, the accused was its nominal member. The Trial Court has therefore recorded a further finding that, no loan was liable to be disbursed to the accused. I have perused the evidence of CW No.1 Satbhai & CW No.2 Chief Executive Officer - Gaikwad. In his evidence, CW No.2 Gaikwad has categorically stated that, the accused had applied for nominal membership vide his application at

Exh.44 and the said application was granted in the Management Committee meeting held on 28.07.2007. The application submitted by the accused at Exh.44 and the copy of the resolution at Exh.45 are existing on record. In view of the aforesaid two documents, *prima facie* there was no reason for doubting the contention of the complainant i.e. present appellant that, the accused was its nominal member and therefore the loan was sanctioned and disbursed to him. The further discussion made by the trial Court *prima facie* reveals that, it has drawn some far fetched inferences. The evidence on record and the finding recorded by the trial Court therefore need to be rescrutinized. I am, therefore, inclined to allow the present application. Hence, the following order.

ORDER

1. The application is allowed.
2. The appeal be registered in accordance with law.
3. On registration of the appeal, issue notice to the respondents returnable after four weeks. The learned Counsel, Shri V.B. Kale waives service of notice for respondent no.1. The learned APP waives service of notice for respondent no.2 – State.
4. Call for Record & Proceeding.

(PR. BORA, J)