

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

CRIMINAL APPLICATION NO. 2969 OF 2016

Shri Rameshwar Sahakari Sakhar
Karkhana Ltd., A body corporate
constituted under the provisions of
Maharashtra Co-operative Societies
Act, having its factory and office
premises at Raosaheb Nagar,
Sipora (Bazar), Taluka Bhokardan,
District Jalna, Through its Managing
Director

..Applicant

Versus

Suruchi Kamlakar Samant,
Age 50 years, Occu. Business,
A Partner of Partnership Firm,
i.e. Swet Sarita Farm Products,
having its office at `Anant Sagar`,
Vijaywadi, Chalisgaon,
District Jalgaon

..Respondent

Mr H.D. Deshmukh, Advocate for applicant
Mr S.B. Yawalkar, Advocate for respondent

CORAM : A.M. DHAVALÉ, J.

DATE : 25th September 2017

PER COURT

1. The original complainant under Section 378 (4) of Cr.P.C. seeks leave to file appeal against acquittal of accused no. 4 in Summary Criminal Case No.158 of 2014, decided by Judicial Magistrate, First Class, Chalisgaon by judgment dated 27.4.2016. In this case, accused no.1 is Partnership firm consisting of two partners accused no.3 and 4 while accused no.2 is Chief Executive Officer of the firm. In connection with supply of raw sugar of 5000 metric ton, Bank guarantee of Rs.1,30,89,000/- was given and since there was no supply of raw sugar, a cheque of Rs.1,46,42,100/- was issued by the

firm which was signed by accused no.2. Accused no.3 as a partner had executed the agreement and had correspondence in the transaction. The learned Judicial Magistrate, First Class accepted the complainant's case to hold accused nos.1 to 3 guilty, but no punishment is awarded to accused no.1, which is a partnership firm. As far as accused no.4 is concerned, her plea that she was sleeping partner was considered and it was held that there was no material to show that she was in-charge of the management of the firm and was responsible for day to day activities.

2. Mr Deshmukh, learned Advocate for the applicant relied on the ratio in **Standard Chartered Bank Vs. State of Maharashtra and ors., 2016 AIR (SC) 1750** and pointed out that the complaint contains the necessary averments regarding the role of accused no.4 as well and the burden was on accused no.4.

3. After hearing learned Advocate Mr Yawalkar for the respondent, I find that the applicant has arguable case against accused no.4, whereas there is a very strong case against accused no.1. Therefore, application deserves to be allowed and the appeal deserves to be admitted.

4. It is, however, pointed out that the accused no.1 has not been made a party and there is no prayer for convicting accused no.1. Hence, oral request for amendment to add respondent no.1 as a party after a period of one year and three months in the light of grounds of appeal cannot be permitted.

5. Hence, the application is allowed. Liberty granted to file appeal against acquittal of accused no.4 only.

6. The appeal is admitted. Issue notice to the respondent. Learned Counsel Mr Yawalkar waives notice for respondent. Learned trial Judge is directed to grant bail to accused no.4 under Section 390 of Cr.P.C. on such terms and conditions, as he deems fit.

7. Record and Proceedings be sent to the trial Court for the time being.

(A.M. DHAVALÉ, J.)

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