

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

Office Notes, Office
Memoranda of Coram,
appearances, Court's
orders or directions
and Registrar's orders

Court's or Judge's orders

IN CRIMINAL APPLICATION 3717/2015

POORNAWADI NAGRIK SAHAKARI BANK LTD.

BEED

VERSUS

BABU S/O RAMCHANDRA GITTE

...

Advocate for Applicant: Mr. Ghayal Sanjay

Advocate for Respondents : Mr. S.S. Thombare

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CORAM : V.L. ACHLIYA, J.

Dated: JUNE 14, 2017

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Applicant has taken out this application seeking leave to file appeal against the impugned judgment and order passed by the Trial Court acquitting the accused for the offence punishable under section 138 of the Negotiable Instruments Act.

2 Heard the learned counsel for applicant-appellant and learned counsel for the respondent-accused, perused record and proceedings on record. Learned counsel for the complainant

submits that dismissal of complaint and acquittal of accused is not justifiable. The complainant has proved that cash credit limit was availed by the accused. An amount to the tune of Rs. 5,00,000/- was due against the respondent-accused towards the loan secured by cash credit limit. The recovery certificate under section 101 of the Co-Operative Societies Act was also issued by the Competent Authority. The accused had taken a defence that he has paid the amount in cash to the extent of Rs. 2,37,000/- to Recovery officer Shri. Rajurikar. He further submits that the receipt produced by the accused was referred for opinion of the Hand Writing Expert. The report of Hand Writing Expert establishes that the signature on the receipt is not that of Rajurikar. In spite of that the trial court has dismissed the complaint by observing that on comparison of the signature by naked eyes, the signature appears to be of one and the same person.

3 On the other hand learned counsel for respondent-accused submits that the judgment and order passed by the trial court is based on proper appreciation of evidence and calls for no interference.

He submits that the trial court has rightly held that the complainant failed to establish the fact that the cheque in question was issued in discharge of legal liability or dues.

4 On consideration of the submissions advanced, I am of the view that, the case is made out to grant leave to file appeal. Although the accused has taken a defence that he has paid the amount to the extent of Rs.2,37,000/- to the Recovery Officer Shri. Rajurikar and produced receipt alleged to have been issued by the said officer, the officer is not examined to prove the receipt. In this view, the arguable case is made out to be considered in appeal. I am, therefore, inclined to allow the application seeking leave to file an appeal.

5 Accordingly, application is allowed. Leave is granted to file appeal. Appeal be registered and placed for admission on 22.6.2017.

Application stands disposed of.

(V.L. ACHLIYA,J)