

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

CRIMINAL APPEAL NO. 388 OF 2017

Shri Renukamata Multi State Co-operative
Urban Credit Society Ltd. Ahmednagar
Through its General Manager,
Mr. Harishchandra Ambadas More
Age: 45 years, Occu.: General Manager,
R/o Renuka Bhavan, Near Pushpak Hotel,
Ekvira Chowk, Pipeline Road, Ahmednagar. ..APPELLANT

VERSUS

Prashant Dattatraya Dahale
Age: 38 years, Occu.: Service,
R/o 258, Matruprasad Bldg.,
Sangale Galli, Nalegaon, Ahmednagar. ..RESPONDENT

Mr. A.T. Kanawade, Advocate for appellant
Mr. M.S. Deshpande, Advocate for respondent

**CORAM : SANGITRAO S. PATIL, J.
DATE : AUGUST 24, 2017**

ORAL JUDGMENT :-

Heard the learned Counsel for the appellant
and that of the respondent. Arguable points are
raised.

2. Admit the appeal.

3. On admission of the appeal, Mr. Deshpande, learned Counsel waives service on behalf of the respondent.

4. With the consent of the learned Counsel for the parties, heard finally.

5. The appellant has challenged the order dated 10th November, 2016 passed in S.C.C. No. 1602 of 2011 by the learned Judicial Magistrate First Class, (Court No.2) Ahmednagar, whereby the respondent has been acquitted of the offence punishable under Section 138 of the Negotiable Instruments Act vide Section 256 of the Code of Criminal Procedure, because of the absence of the appellant on the date when the said case was fixed for hearing.

6. The learned Counsel for the appellant submits that due to demonetisation of the currency notes declared by the Central Government on 08th

November, 2016, the Manager of the appellant - society was under the great pressure of work. He was supposed to attend the Court on 10th November, 2016 for facing the cross-examination. However, he could not attend the Court because of the above mentioned reason. The learned Magistrate acquitted the respondent for the above mentioned offence. The absence of the manager was not deliberate or intentional. He submits that public money is involved in the case and the appellant needs to be given an opportunity to prosecute the case. He, therefore, prays that the impugned order may be set aside and the above numbered criminal case be restored to its original number for disposal.

7. The learned Counsel for the respondent strongly opposed the claim of the appellant for restoration of the above numbered criminal case. He submits that the hearing of the case was adjourned by the Trial Court on various dates. An ultimatum was

given on 25th October, 2016, as a last chance, subject to payment of costs of Rs.300/-, and the case was adjourned to 10th November, 2016. However, neither the cost was deposited, nor the manager of the appellant - society appeared before the Court for proceeding with the case. Therefore, there was no other alternative and the learned Magistrate acquitted the respondent vide Section 256 of the Code of Criminal Procedure. He submits that the impugned order is quite legal, proper and correct and prays that the appeal may be dismissed.

8. The appellant is a multi state urban credit society. There is no dispute that the demonetisation of the currency notes was declared by the Central Government on 08th November, 2016. As a result thereof, there was lot of pressure on the officers of the financial institutes like the present appellant, in the matter of exchange of old currency notes and also make available the new currency notes to the

customers of the appellant – society. In the circumstances, the reason given by the appellant that because of the pressure of work its manager could not attend the Court for proceeding with the above numbered criminal case, being natural and proper, will have to be accepted and accordingly accepted. Absence of the manager of the appellant – society, therefore, cannot be said to be deliberate or intentional. As a matter of fact, the appellant was not going to be benefitted by keeping its manager absent before the Court without any reason. The loss of the appellant – society certainly was loss of its members. Considering the reason given by the appellant – society for absence of its manager before the Trial Court for hearing of the above numbered criminal case, I am of the view that necessary opportunity will have to be extended to the appellant to proceed with the above numbered criminal case.

9. In these circumstances, I pass the following order:-

O R D E R

- (I) Appeal is allowed.
- (II) The impugned order dated 10th November, 2016 is quashed and set aside.
- (III) The Trial Court shall restore S.C.C. No. 1602 of 2011 to its original number and decide it according to law, after extending both the parties to produce their grievance.
- (IV) The appellant shall pay Rs.1,000/- (Rupees One Thousand Only) to the respondent, as costs.
- (V) The parties shall appear before the Trial Court on 20th September, 2017.
- (VI) The appeal is accordingly disposed off.

[SANGITRAO S. PATIL]
JUDGE