

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

**CRIMINAL APPELLATE SIDE**

**CRIMINAL APPLIATION NO.251 OF 2015**

Suvarnalaxmi Nagari Co-operative

Pat Sanstha Ltd.

... **Applicant**

V/s.

Shrikant Vasantao Wankhede & Anr.

... **Respondents**

....

Mr.Sachin Gite, Advocate for the Applicant.

Mr.Swapnil V. Walve, Advocate for Respondent No.1.

Mr.Amit Palkar, APP for the Respondent/State.

....

**CORAM : A. M. BADAR J.**

**DATED : 9<sup>th</sup> JANUARY 2017.**

**P.C . :**

1            Heard both sides.

2            This this an application for grant of leave to appeal and the same is filed by unsuccessful complainant, who seeks to challenge the Judgment and Order dated 26/02/2015 passed by the learned Judicial Magistrate First Class, 3<sup>rd</sup> Court, Nashik acquitting respondent No.1 of offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

3            On behalf of the applicant, it is argued that sufficient material was placed on record to demonstrate legally recoverable debt. As against this, by contending paragraph 18 and 19 of the

impugned Judgment and Order, it is sought to be argued on behalf of non-applicant/respondent that despite chance relevant documents such as loan agreement, loan disbursement documents were not filed.

4           The learned trial Court was alive to the presumption in favour of the complainant by virtue of Section 139 of the Negotiable Instruments Act, 1881. The impugned Judgment and Order reflects that certified loan account extract was placed on record and it was marked as Exhibit 38. However, the same was ignored by holding that some more proof was required.

5           In this view of the matter, I am of the opinion that the impugned Judgment and Order of acquittal needs further consideration at the hands of this Court and, therefore, the order :

- i) The application is allowed by granting leave to the applicant, as prayed.
- ii) Application be treated as an Appeal.
- iii) Admit.
- iv) Notice to respondents.
- v) Action under Section 390 of the Code of Criminal Procedure before the trial Court.
- vi) The learned Additional Public Prosecutor waves notice for respondent No.2

**(A. M. BADAR J.)**