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

CRIMINAL APPLICATION (APPA) NO.392 OF 2015

Rajarshi Shahu Gramin Co-operative
Credit Society Ltd., Shirpur,
having registration No.333, through
its authorized officer i.e. Recovery
Officer namely Shri. Ganesh s/o
Yeduba Kakde, aged about 38 years,
Occ: Service, R/o. Buldhana Tah.
and Dist. Buldhana. ..APPLICANT

VERSUS

Raju s/o Gulabrao Hiwale,
aged about 38 years, Occ: Agri.,
R/o. Ekta Nagar, Buldhana,
Tah. and Dist. Buldhana. ..RESPONDENT

Mr N.B. Kalwaghe, Advocate for applicant;
Mr R.G. Karimanden, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 17th MARCH, 2017

ORAL ORDER :

The applicant filed complaint being Summary Criminal Case No. 214 of 2011 against the respondent for offence punishable under Section 138 of the Negotiable Instruments Act, as the respondent-accused was in the employment of the applicant-co-operative credit society and obtained loan facility of Rs.30,000/-.

2. By judgment and order dated 8th April, 2015, learned Judicial Magistrate, First Class, Buldhana, acquitted the respondent-accused of the said charge. As such, present application.

3. Mr. Kalwaghe, learned Counsel for the applicant submits that even if Ganesh Kakde, who was authorized to file complaint under Negotiable Instruments Act on behalf of the applicant-co operative credit society by virtue of Resolution No.5 dated 9th May, 2010 was authorized to file complaint under the Negotiable Instruments Act on behalf of the applicant-co operative credit society, non production of such resolution or absence of any oral evidence authorizing to file such complaint in the testimony of said witness Ganesh will be of hardly any impediment. According to him, if the testimony of another witness of the complainant namely Sandip, if appreciated, he in categorical terms has stated that said Ganesh was authorized to file complaint pursuant to resolution at Exhibit-60. He would then submit that hyper

technical approach is taken by the Magistrate, while ordering acquittal.

4. Per contra, Mr. Karimanden, learned Counsel for the respondent-accused submits that the complainant being co-operative credit society having separate identity under law, it was mandatory that the complainant must depose that he was authorized to file such complaint. According to him, in absence of such oral evidence, the complaint itself was not maintainable and is rightly rejected by learned Magistrate.

5. Considered rival submissions. It is not in dispute that the complainant-present applicant is co-operative credit society registered under the Maharashtra Co-operative Societies Act, 2002. There is separate seal and identity of such society of its legal existence, however, the proceedings on behalf of such society are conducted by individual upon authorization to that effect. The authorization as could be noticed from the resolution dated 9th May, 2010 appears to be

produced in the evidence of witness Sandip, who has in categorical terms stated about authorization of one Ganesh to file complaint. However, said Ganesh has neither produced copy of such resolution in his evidence nor deposed that he has filed complaint for and on behalf of complainant-society. Once such oral evidence is not brought on record, it is difficult to infer that there was authorization in favour of one Ganesh to file complaint for and on behalf of the complainant-co operative credit society.

6. In view of above, in my opinion, view expressed by learned Magistrate that competency to file complaint was not proved appears to be based on evidence that was brought on record. As such, view expressed by the Magistrate appears to be in tune with legal provision and upon appreciation of evidence, which, in my opinion, does not call for any interference. As such, criminal application fails and stands rejected.

(N.W. SAMBRE, J.)

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