

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.278 OF 2014

Shri Datta Nagari Sahakari
Pat Sanstha Maryadeet(Chinchwad) ... Applicant
V/s.
Bharat Dnyandeo Patil and anr. ... Respondents

Mr.Kedar P. Lad i/by Mr. P.D.Dalvi for the Applicant.
Mr.Rahul S. Kulkarni for Respondent No.1.
Mr.A.R.Kapadnis for Respondent No.2.

**CORAM : A.S.GADKARI, J.
DATE : APRIL 17, 2018.**

P.C.:

1. This is an application under Section 378(4) of Cr.P.C. for leave to file appeal against the Judgment and Order dated 2nd August 2012, passed by the Judicial Magistrate, Kolhapur in RCC No.109 of 2003, thereby acquitting Respondent No. 1 from the offence punishable under Section 138 of the Negotiable Instruments Act.
2. Heard the learned counsel for the applicant and learned counsel for the Respondent No.1. Perused the record.
3. It is the case of the Applicant that in furtherance of loan advanced by the Applicant-society, the Respondent issued cheque

towards the repayment of the said loan amount, which has been dishonoured on presentation.

The evidence on record indicates that the Applicant-society on 21st September 2004, has in fact issued a letter intimating Respondent No.1 that the Complainant-society has recovered entire loan amount and there are no dues-balance against the account of Respondent No.1. On the basis of the said letter, the property which was mortgaged by Respondent No.1 has also been released. Thus, it is clear from the record that the Respondent was not liable to pay any amount to the Applicant. It is the defence of Respondent No.1 that he had deposited the said cheques with the Applicant-society towards security and the same were to be returned to him after repayment of the loan amount, but despite repayment of the loan, the said cheques were not returned to him and are misused. I find substance in the defence of Respondent No.1.

4. After perusing on record, this court is of the opinion that the view adopted by the Trial Court is a reasonable and probable view in view of the facts and circumstances of the present case.

5. No case for grant of leave to file appeal is made out.

6. Application is accordingly rejected.

(A.S.GADKARI, J.)

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