IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.272 OF 2016
(For leave to Appeal – Private)

The Faiz Arban Co-Op. Credit Society Ltd. ... **Applicant**
V/s.
Mr.Shaikh Shakil Chand & Anr. ... **Respondents**

.....

Mr.Prashant D. Patil, Advocate for the Applicant.

Mr.S.V.Gavand, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 21st JUNE 2018.

P.C. :

1 This is application for grant of leave to appeal for challenging the Judgment and Order dated 01/10/2014 passed by the learned Judicial Magistrate First Class, 3rd Court, Nashik thereby acquitting the respondent/accused of the offence punishable under Section 138 of the Negotiable Instrument Act, 1881.

2 Heard the learned Advocate appearing for the applicant/original complainant. He vehemently argued that the applicant is the Co-operative Credit Society, which has advanced

loan to the respondent/original accused and in discharging his liability for repayment of that loan, he had tendered a cheque of Rs.75,000/- to the present applicant. In submission of the learned Advocate for the applicant, that cheque came to be dishonoured and the bank memo reflects that the same could not be honoured as funds in the account of the respondent were insufficient. The learned Advocate, therefore, argued that as the cheque was for legally enforceable debt of the Co-operative Credit Society , the learned trial Magistrate erred in dismissing the complaint and acquitting the respondent/accused of the alleged offence against him.

3 I have carefully considered the submissions so advanced and I have also examined the record made available. Cheque issued by the respondent/original accused was for Rs.75,000/-. It came to be returned by the banker of the respondent with an endorsement that funds are insufficient to honour that negotiable instrument.

4 During the course of trial, the applicant had examined Sayyad Asagaralli Gayasuddin as its witness No.1 and Salim Patel came to be examined as C.W.No.2. Reliance was placed on documentary evidence including the account extract.

5 The learned trial Court upon examining the account extract has rightly concluded that the dues payable by the

respondent/accused towards refund of loan were Rs.64,245/-. In the light of this fact, the learned trial Court concluded that the cheque for Rs.75,000/- cannot be a cheque for a legally enforceable debt. The finding of the fact is correctly recorded by the learned trial Magistrate and as the cheque was not found to be for legally enforceable debt, it cannot be said that the offence punishable under Section 138 of the Negotiable Instruments Act 1881 was made out by the complainant.

6 In the light of foregoing reasons, no infirmity found in the impugned Judgment and Order of acquittal. No case for grant of leave is made out.

7 The application is, therefore, rejected.

(A.M.BADAR J.)