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

CRIMINAL APPLICATION 440 OF 2017
(Shri Ganesh NagriSahakari Pat Sanstha Maryadit Akola...Vs. Ranjit Kisanrao Raibole)

Office Notes, Office Memoramda of Coram, appearances, Court's orders of directions and Registrar's Orders. | *Court's or Judge's orders.*

Shri V.R. Deshpande, counsel for applicant.
Shri U.J. Deshpande, counsel for respondent.

CORAM: ROHIT B. DEO, J.
DATE: 7th MARCH, 2018.

Heard.

2 The original complainant is seeking leave under section 378(4) of the Code of Criminal Procedure to challenge the judgment and order dated 9.3.2017 rendered by Judicial Magistrate First Class (Court – 2) Akola in Summary Criminal Case 294 of 2013, by and under which, the respondent is acquitted of offence punishable under section 138 of the Negotiable Instruments Act, 1881 ("Act" for short).

3 Shri V.R. Deshpande, the learned counsel for the applicant would submit that the learned Magistrate has committed serious error of law in not appreciating the implication of the statutory presumption under section 139 of the Act. Per contra, Shri U.J. Deshpande, the learned counsel for the respondent supports the judgment and order of

acquittal. He invites my attention to the reasons recorded by the learned Magistrate which according to him are unexceptionable.

4 I have scrutinized the complaint, the evidence of CW 1 Shri. Arun Kamlakar Mohril and the reasons recorded by the learned Magistrate, and having done so, I do not find any infirmity in the judgment and order impugned.

5 The complaint does not disclose the date, month or year in which the loan was sanctioned to the respondent. It has come on record in the cross examination of CW 1 that the loan was sanctioned in 2011. Concededly, as is admitted by CW 1 in the cross examination, several documents were executed inter-alia a loan agreement. The said agreement is not placed on record. The defence that blank chedque is given as security is misused by filling amount which, at that point in time, was not payable, is probabilized by the evasive answers given in the cross examination by CW 1. The learned Magistrate has recorded a finding that even if it is assumed that ten monthly installments were not paid, after factoring in interest, the outstanding amount can not be Rs. 1,29,964/-. The finding recorded by the learned Magistrate is unexceptionable. It is not the case of the complainant that

due to default, the entire loan of Rs. 1,30,000/- was recalled. To the contrary, it is an admission extracted that the notice was issued only to claim the amount covered by the outstanding installments. In this view of the matter, the mathematical calculations recorded by the learned Magistrate in paragraph 31 of the judgment impugned appear to be correct. It is more than obvious from the evidence that when the cheque was presented for encashment, amount of Rs. 1,29,964/- was not due and payable by the accused. It may be reiterated, that it is not the case of the complainant society that the amount covered by the cheque is the amount of the entire loan or that due to the defaults committed, the loan was recalled.

6 The view taken by the learned Magistrate is a possible view and no interference in judgment and order of acquittal is warranted.

7 Leave to appeal is rejected.

JUDGE

rsb