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

CRIMINAL APPLICATION (APPA) NO. 778 OF 2017
AND
CRIMINAL APPEAL NO. 658 OF 2018

Nishant Multi-State Co-op. Credit Society Ltd., Akola, Main Branch, Nishant Towers, M.G.Road, Akola, Through its Officer : Shri Sharad H. Deshmukh, Aged about 41 years, Occ.: Service, R/o. Akola, Tq. And District : Akola (P.S. City Kotwali, Akola.)

.... **APPELLANT.**

// **VERSUS** //

Raju S/o. Ramkrushna Mane, aged about 35 years, Occ.: Business, R/o. Harihar Peth, Old City, Akola, Tq & Dist. Akola (P.S. Old City, Akola)

.... **RESPONDENT.**

Shri Amol B. Patil, Advocate for Appellant.
Shri S.G.Rathi, Advocate for Respondent.

CORAM : Z.A.HAQ, J.
DATED : OCTOBER 24, 2018.

CRI.APPLN.NO.778/2017

Heard.

Applicant/appellant has filed appeal to challenge the judgment passed by the learned Magistrate by which the complaint filed by it under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as “the Act of 1881”) is dismissed and the respondent/accused is acquitted.

Considering the facts of the case, I am satisfied that the applicant is entitled for grant of leave to file and prosecute the appeal to challenge the above referred judgment. Leave is **granted** accordingly.

CRI. APPEAL NO. 658/2018.

ORAL JUDGMENT :

1. Taken up for further consideration/ hearing.

2. **ADMIT**.

3. As the R & P is received, the appeal is taken up for final hearing.

4. According to the complainant, it is Multi-State Credit Co-operative Society and is in the business of advancing cash credit/loan facility to its members. The complainant society had sanctioned/advanced cash credit limit of Rs.7,32,856/- to the accused to purchase the vehicle. At the time of receiving the loan amount, the accused had agreed to repay the loan

amount along with interest. The accused failed to repay the loan amount and therefore, on 9th August 2011 the accused had given the cheque (Exh.36) for Rs.4,00,000/- towards part-payment of the loan amount. The cheque was deposited, however, it was not honoured and returned to the complainant with the endorsement "funds insufficient". The complainant issued notice dated 18th August 2011 which was served on the respondent on 19th August 2011. The accused neither paid the amount nor replied the notice and therefore, the complaint was filed.

5. The complaint is dismissed by the learned Magistrate recording that the complainant has failed to prove that the accused had given cheque in question to discharge the legal liability. The learned Magistrate has recorded a finding that the signature on the cheque in question defers from the signature on the loan account.

6. With the assistance of the learned advocates for the respective parties, I have gone through the record and the impugned judgment. I find that the accused had not raised the defence that the signature on the cheque in question is not of the accused. As this defence was not raised by the accused, in my view, it was not proper for the learned Magistrate to delve into that issue. Even otherwise, the accused has not taken any steps to discharge the burden of proving that the signature on the cheque in question was not of the accused. Other defence raised by the accused is that the loan

was given to Siddheshwar Travel Company to purchase a vehicle and not to the accused. Again, I find that the accused has not discharged the burden of proving that the loan was given to Siddheshwar Travel Company and not to the accused. The complainant specifically pleaded in the complaint that the loan was given to the accused and after committing defaults in paying the instalments, the accused had given cheque for Rs.4,00,000/- to repay the part of the amount of loan. The presumption created by Section 139 of the Act of 1881 is in favour of the complainant. Of course, the accused could have rebutted the presumption, but I find that the accused has failed to discharge the burden of rebutting the presumption created by Section 139 of the Act of 1881.

7. In view of the above, I find that the conclusions of the learned Magistrate are not sustainable and consequently the impugned judgment has to be set aside.

8. Hence, the following order:

i) The judgment passed by the learned 5th Judicial Magistrate First Class in Summary Criminal Case No. 2345 of 2011 on 20th July 2017 is set aside.

ii) It is held that the respondent/accused-Raju Ramkrushna Mane is guilty of commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

iii) The respondent/ accused-Raju Ramkrushna Mane shall deposit Rs.8,00,000/- within three months.

iv) If the amount of Rs.8,00,000/- is deposited by the respondent/accused within three months, amount of Rs.7,90,000/- be given to the appellant-Nishant Multi-State Coop. Credit Society Ltd., Akola.

v) If the respondent/accused-Raju Ramkrushna Mane fails to deposit the amount of Rs.8,00,000/- within the stipulated time, he shall undergo simple imprisonment for one year.

The appeal is **allowed** in the above terms with costs quantified at Rs.Forty Thousand to be paid by the respondent/accused to the appellant. The receipt showing payment of amount of costs shall be produced on record of this appeal within two months.

JUDGE

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