

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

CRIMINAL APPEAL NO. 842 OF 2019

Hutatma Bapu Wani Urban Co-Operative,
Credit Society Ltd., Jalgaon,
Shop No. 188, Ground Floor,
New B.J. Market, Jalgaon,
Tq. & Dist. Jalgaon,
Through its Authorized person i.e. Manager,
Shailesh Manohar Wani.

.... Appellant
(Original Complainant)

VERSUS

1. Prop Swami Samarth Electricals,
Shop No. 25, New B.J. Market, Jalgaon,
Tq & Dist. Jalgaon.
2. Pramod Sudhakar Neve,
Age : Major, Occ. Service,
R/o: 31/32, Trimbak Nagar,
Mahabal Road, Jalgaon.

OR/AND

Recovery Officer, Vanijya Investors,
Urban Co-Op Credit Society,
367, Jai Kisan Wadi,
Near Navjeevan Mangal Karyalay,
Jalgaon, Tq & Dist. Jalgaon.

... Respondent
(Original Accused)

...

Mr. Anand I. Deshmukh, Advocate for Appellant
Mr. Ravi R. Bangar, Advocate for Respondents No.1 and 2

...

WITH

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Mr. Anand I. Deshmukh, Advocate for Appellant
Mr. Ravi R. Bangar, Advocate for Respondents No.1 and 2
...

CORAM : K. K. SONAWANE, J.

DATED : 21st AUGUST, 2019.

JUDGMENT :

1. Heard. **Admit.** The present appeals are taken up for final hearing on merit with the consent of both sides.

2. Appellant – Hutatma Bapu Wani Urban Co-operative Credit Society Ltd, Jalgaon (for short "Credit Society") preferred present appeals against impugned Judgment and order of dismissal of penal proceeding bearing SCC Nos. 1152 and 1154 of 2008 filed under Section 138 of the Negotiable Instruments Act. It is not in dispute that there was money transaction in between Credit Society and respondent-accused for transfer of Shop No. 268 located in B.J. Market, Jalgaon. It has been alleged that respondent - accused procure

advance amount of Rs. 3,25,000/- from Credit Society and misused the same. Thereafter – appellant Credit society insisted for repayment of loan but the respondent did not refund the amount as per agreement. Eventually, respondent-accused issued two cheques of Rs.50,000/- each being part payment of amount of Credit Society availed for transfer of immovable property. But, the impugned cheque came to be dishonoured, and thereafter the appellant - Credit Society issued statutory notice but did not receive any response. The appellant - Credit Society preferred to file penal proceedings under Section 138 of the NI Act. Pending the proceedings, representative of the Credit Society did not pay any heed to prosecute the matter before learned trial Court. The continuous absence of appellant - Credit Society in the proceedings constrained the learned Magistrate to dismiss the proceedings in default and passed the impugned order dated 14-09-2016 in both the proceedings.

3. According to learned counsel for the appellant-Credit Society, the matter pertains to public funds and representative of the appellant due to unavoidable circumstances could prosecute the matter, which resulted into dismissal of proceedings. He has given assurance that henceforth representative of appellant - Credit Society will take every care and precaution for expeditious hearing in the matter, if the proceedings are restored at its original stage.

4. Learned counsel for respondent - accused raised objection and submit that the matter is pending since year 2008. The appellant has not taken reasonable precaution and care to get the matter adjudicated

on merit. The order passed by learned Magistrate is just, proper and reasonable one.

5. As referred above, both the proceedings pertains to public funds. It has been alleged that the respondent-accused utilized the funds of the Credit Society for transfer of immovable property in his favour, but he did not repay the amount. Thereafter, the respondent - accused issued two cheques for refund of loan amount which came to be dishonoured for lack of funds. The appellant-Credit Society preferred penal proceeding under Section 138 of the NI Act. Unfortunately, both the proceedings were dismissed for want of prosecution.

6. In view of nature of subject-matter and the factual aspect of the matter, I find that reasonable opportunity is required to be given to the appellant-Credit Society to prove the allegations on the anvil of merit. It would facilitate for substantial justice into the matter. Therefore, there is no impediment to allow the appellant -Credit Society to get the proceeding adjudicated on merit. Obviously, there was considerable delay in prosecuting the matter. But, it cannot be ignored that the appellant is the Credit Society and respondent- accused was the erstwhile Chairman of the appellant-Credit Society and definitely it would be one of the factor to preclude the Society for prosecuting the matter within time in the Court of law. Be that as it may, in view of nature of subject-matter and assurance for expeditious hearing of the matter before the learned trial Court on behalf of appellant, the appeals deserve to be allowed. Definitely, it would sub-serve the purpose to adjudicate the penal proceedings filed against respondent - accused by

the Credit Society on merit for substantial justice.

7. Accordingly, both the Criminal Appeals are allowed in terms of prayer clause "D". The impugned orders of dismissal of penal proceedings bearing SCC Nos. 1152 and 1154 of 2008 stand quashed and set aside. Both the proceedings be restored to its original stage. The appellant-Credit Society and respondent-accused are hereby directed to appear before the trial Court, Jalgaon on 16-09-2019 for further process into the matter. It is also stipulated that, learned trial Court shall make endeavour to adjudicate both the proceedings on its merit, as early as possible, more particularly, within the period of six months from the date of receipt of writ of this order. The learned trial Court shall not influenced by the observations made in this order. The observations are made only for the purpose of present proceedings.

8. With the above directions, both the appeals stand disposed of. No order as to costs.

Sd/-
[K. K. SONAWANE]
JUDGE

MTK