

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

**CRIMINAL APPLICATION NO.35 OF 2018
(For leave to file Appeal)**

Samta Nagari Sahakari Patsanstha Applicant
Ltd. Nira Banch, Baramati

Vs.

1 Shri. Shankar Vishwanath Salunke
2 The State of Maharashtra Respondents

Mr. Rupesh Atul Zade for the applicant.

Mr. Y.M. Nakhwa, APP for State.

Coram : Smt. Sadhana S. Jadhav, J.

Date : 5th February 2019

P.C.:

1 This is an application seeking leave to appeal against the judgment and order dated 4th December 2017 passed by Judicial Magistrate, First Class, 3rd Court, Baramati acquitting respondent no.1 under Section 130 of Negotiable Instruments Act in Summary Trial Case No. 662 of 2014.

2 The applicant is the Co-operative Society registered under the Maharashtra Co-operative Societies Act. The facts of the case would show that respondent no.1 herein had availed loan facility of Rs.20.00 Lacs for purchasing land property. The loan was a secured loan. The respondent no.1 had issued a cheque of Rs.20,24,325/- dated 31st March 2014 drawn on Baramati Sahakari Bank Limited, Baramati Branch. The cheque was dishonoured on the ground of “insufficient funds”.

3 That the loan was a secured loan and hence after passing of the judgment and order dated 4th December 2017, the applicant-Bank had obtained a certificate under Section 101 of Maharashtra Co-operative Societies Act and the certificate has been executed in as much as the properties hypothecated/mortgaged/secured for the purpose of availing loan, have been attached by the applicant-Society.

4 That no appeal is filed before the Joint Registrar challenging the action under Section 101 of the Co-operative

Societies Act and in case it is filed, it would take its own course under the provisions of Maharashtra Co-operative Societies Act, 1960 wherein the applicant would be under an obligation to deposit 50% or more of the amount, in order to register an appeal. In any case, respondent no.1 has been acquitted on the ground that the Resolution at Exhibits 24 and 52 do not indicate that the complainant had an authority to file a complaint as stated in paragraph 40 of the judgment. The Resolution at Exhibit 24 and 52 reads as follows :

“40. “Authority is granted to perform the duties as to give statements, to compromise, to try the case, to sign the documents, to do affidavits, to give oral or documentary evidence and for this purpose to do anything”.

and therefore the learned Magistrate has upheld the contention of the accused that the complainant credit society had not granted authority to PW-1 to file a complaint against the accused.

5 Be that as it may since the legally enforceable debt has reached its logical end by execution of certificate under Section 101

of Maharashtra Co-operative Societies Act, this would not be a fit case to grant leave to file an appeal. Hence, the application stands rejected.

(Smt. Sadhana S. Jadhav, J)