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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO. 406 OF 2019
(FOR LEAVE TO APPEAL)**

Samrudhi Nagari Sahakari Patsanstha
Ltd

.....Applicant

V/s.

Naeem Daud Patil and another

.....Respondents

Mr. Umesh Mankapure for the applicant
Mr. R. M. Pethe APP for the State

CORAM : NTIN W. SAMBRE, J.

DATE : NOVEMBER 4, 2019.

P.C.

Heard.

2 Respondent-accused was acquitted of an offence punishable under Section 138 of Negotiable Instruments Act vide Judgment dated 07/03/2018.

3 Complainant-Credit Co-operative Society so as to establish its

case of the admitted liability, has relied on loan account extract of the accused which is produced at Exhibit 27. Same depicts loan calculation is upto 01/01/2013 and subsequent calculations are not reflected in the loan account. Complaint came to be filed in 2015 i.e. almost after period of more than 2 years.

4 Even if there is presumption in favour of applicant-Co-operative Credit Society, unless it is demonstrated that cheque was issued for admitted debt of Rs. 82757/-, accused cannot be convicted for the same. Rather the cheque appears to have been issued towards security as is claimed by the accused.

5 From the extract of the loan account at Exhibit 27, particularly having regard to non-calculation of the amount from 01/01/2013 till the date of filing of the complaint, prevailed before the Magistrate who ordered acquittal as liability based on legally payable debt was not established.

6 Though learned counsel for the applicant, Shri. Mankapure

has relied on the recovery certificate issued under Section 101 of the Maharashtra Co-operative Societies Act, 1960, however, that by itself cannot be basis for drawing a presumption in favour of the applicant for inferring an admitted debt unless same is proved by adducing cogent evidence. Applicant has every right to execute recovery certificate under Section 101 of the Maharashtra Co-operative Societies Act, 1960 independent of present proceedings. The parameters and the basis for issuance of recovery certificate under Section 101 of Maharashtra Co-operative Societies Act, 1960 and for establishing offence under Section 138 of Negotiable Instruments Act are altogether different.

7 In the aforesaid background, order of acquittal, in my opinion, does not warrant any interference. Applicant is rejected.

[NITIN W. SAMBRE, J.]