IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 532 OF 2015

The Maratha Sahakari Patsanstha Ltd. ..Applicant.
V/s.
Shri Pramod Narayan Godse. ..Respondents.
Mr. Piyush Toshnival I/b. Mr. Aniket U. Nikam, advocate for applicant.
Ms. Pallavi Dabholkar, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : MARCH 28, 2019.

P. C. :

1 Heard the learned Counsel for the applicant and the learned APP for state.

2 This is an application seeking leave to appeal challenging the Judgment and Order passed by the Judicial Magistrate First Class, Satara dated 22/11/2013, thereby acquitting the respondent Promod Godse of the offence punishable under section 138 of the Negotiable Instrument Act.

3 It is the case of the complainant that the respondent herein had borrowed a loan from the applicant society. An amount of Rs. 3,68,037/-, which included loan and interest, was disbursed. It is alleged that the accused had issued a cheque on 13/2/2004 for a sum of Rs.

3,68,037. Upon presentation, the said cheque was dishonoured with an endorsement “refer to drawer”. The applicant had issued a statutory notice to the respondent. Same was not replied and hence, the complaint.

4 It was the defence of the accused that he had not received the statutory notice. However, the said defence has not been accepted by the learned Magistrate on the ground that summons issued on the same address were received by the respondent. During the pendency of the said proceedings, the applicant bank was taken over by Shahupuri Urban Cooperative Bank. The accused had rebutted the presumption by stating that he had issued 5 cheques. 3 cheques were dishonoured and criminal prosecution was initiated against the respondent. That in the course of taking over the administration of Shahupuri Co-operative Bank, two cheques were remained to be transferred and the management had utilised the said cheques to prosecute the respondent. The respondent happens to be one of the directors in minority in Shahupuri Urban Cooperative Bank, Satara. In fact, it was the case of the respondent that he had given instructions to the Manager of Shahupuri Urban Cooperative Bank to stop the payment of these cheques and that the present applicant had knowledge of the same. He had given 5 blank cheques to Shahupuri Cooperative Bank. The said bank had prosecuted

3 cases and the remaining cheques were mis-utilised by the present applicant bank.

5 The learned Magistrate has taken into consideration the fact that it was contended in the complaint that the cheque has been dishonoured on account of insufficient funds, whereas the accused had in fact, given instructions to stop the payment. The Magistrate has rightly appreciated that it was incumbent upon the applicant bank to explain as to how the bank could have returned the cheque for want of sufficient funds. The findings recorded by the learned Magistrate are justifiable in the facts of the case and do not warrant any interference. Hence, the application seeking leave to appeal being sans merits stands rejected and disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]