

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

CRIMINAL APPLICATION (APPA) NO. 624 OF 2019
IN
CRIMINAL APPEAL NO. 289 OF 2011

(Buldhana Urban Cooperative Credit Society Ltd., Buldhana Vs. Ravindra
Laxman Kharche & Ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri D.R. Khapre, Counsel for the applicant
Shri N.B. Kalwaghe, Counsel for the respondent No.1.
Mrs. Mayuri Deshmukh, APP for the respondent No.2.

CORAM : S.M. MODAK, J.
DATE : 17th SEPTEMBER, 2019.

Heard learned advocate for the
applicant/appellant and learned advocate for the
respondent/accused.

2. The trial Court acquitted the accused for
the offence punishable under Section 138 of
Negotiable Instruments Act, 1881. There was a loan
transaction towards purchase of vehicle. The cheque
in question was issued towards discharge of liability
arising out of loan transaction. The accused has
disputed about the taking of loan and the issuance of
cheques. Now, the complainant wants to file the

documents supporting granting of a loan and execution of necessary documents. It is opposed on behalf of the accused on various grounds including an attempt was made to fill the lacuna on behalf of the complainant.

3. Both the learned advocates have prayed for passing an order to decide this application along with appeal. However, prior to accepting their request, when I have heard them on introductory facts and when I have read the application, I find that there are inherent lacunas in the application itself. Because, there are two prayers, firstly, grant of permission to file additional documents and secondly, permitting the complainant to cross-examine the accused.

4. Second prayer cannot be considered by the Appellate Court. Even otherwise, the accused can be cross-examined only when he had come forward to give evidence on oath. So far as the first prayer is concerned, it is not consistent with the section mentioned in the title clause. The appellant has

mentioned Section 311 of Code of Criminal Procedure in the title clause, whereas the relevant Section is 391 of Code of Criminal Procedure. I think for these reasons itself, the application cannot be allowed. At the same time I do not want to deprive the complainant from moving the application containing necessary particulars. So, I intend to grant leave to the complainant to move fresh application. It will not cause any prejudice to the accused because in any case he will be heard prior to deciding the said application. Hence, the order.

ORDER

- i. Application is dismissed.
- ii. The appellant/complainant is at liberty to move fresh application.
- iii. If it is filed it will be decided as per merits.

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Stand over to 1st October, 2019.

JUDGE