

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

CRIMINAL APPLICATION (APPA) NO.953 OF 2018

(Buldhana Urban Co-operative Credit Society Ltd., Buldana Vs. Baban s/o Dnyandev
Gawhad)

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

Court's or Judge's orders.

Shri D.I. Charlewar, Advocate for Appellant.
Shri A.J. Thakkar, Advocate for Respondent.

CORAM: ROHIT B. DEO, J.

DATE: 20th JUNE, 2019.

Heard.

2] An arguable case is made out by the complainant
for grant of leave to appeal.

3] Perusal of the judgment would show that the
learned Magistrate has rightly held that the statutory
presumption is triggered.

4] The question is whether the accused has rebutted
the presumption.

5] It appears from the judgment, that the signature
is on the cheque is not disputed nor is it in dispute that the
loan was availed.

6] It is true that the learned Magistrate does observe that the complainant Society did not produce on record the accounts. But then, the question would be whether the accused, who is required to rebut the presumption, was obligated to categorical state whether any amount was outstanding, and if outstanding, the quantum of amount. The burden would not shift on the complainant untill the accused has rebutted the statutory presumption albeit on preponderance of probabilities.

7] Leave to appeal is granted. Appeal be registered.

8] Shri A.J. Thakkar, the learned counsel waives service for respondent.

9] Call for record and proceedings.

JUDGE