IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO.103 OF 2022

KALIKA NAGARI SAHAKARI PATSANSTHA LTD. AHMEDNAGAR
THROUGH PRAMOD DATTATRAYA KAND
VERSUS
SURESH LAXMINARAYAN ROHIWAL

Mr. A. C. Darandale, Advocate for the applicant
Mr. Ruchir Wani, Advocate h/f Mr. A. S. Bajaj, Advocate for the respondent

CORAM : R. M. JOSHI, J.
DATE : 18th AUGUST, 2023

P.C. :-

1. This application is for leave to file appeal against the judgment and order dated 19/09/2022 acquitting the accused/ respondent for the offence punishable under Section 138 of Negotiable Instruments Act (for short 'NI Act'). It is the contention of the applicant/ original complainant that the applicant is Credit Co-operative Society and that the respondent approached to the applicant for seeking advancement of loan of Rs.1,25,000/- and accordingly on 12/12/2006 the said amount was disbursed to him. It is further contention of the applicant that the accused in discharged of the said liability towards repayment of the loan issued the cheque in question bearing No. 3188074 dated 21/04/2016 for a sum of Rs.6,01,204/-. It is further contended that that the said cheque was sent for realization which was returned dishonored and

statutory notice issued to the accused and since the amount was not repaid, the complaint being SCC No. 1950/2016 came to be filed before Chief Judicial Magistrate, Ahmednagar.

2. Learned counsel for the applicant/original complainant submits that the learned Trial Court has committed error in not appreciating the facts of the present case in proper perspective and has wrongly placed reliance on the order passed in the SCC No. 533/2009 in the Lokadalat on 04/03/2012. It is his further contention the negotiable instrument carries presumption under Sections 118 and 139 that since there is no dispute about the fact that the accused has singed the cheque in question, it was not open for the learned Magistrate to acquit the accused. In support of his submission he placed reliance on the judgment in cases of ***Uttarm Ram Versus Devinder Singh Hudan and Another, (2019) 10 SCC 287*** and ***Kalamani Tex and Another Versus P. Balasubramanian, (2021) 5 SCC 283***.

3. Perusal of the complaint made before the learned Magistrate indicates that the accused has issued a cheque of Rs.6,01,204/- against the repayment of the loan and the same was returned dishonored and since the amount covering the cheque is not paid in spite of receipt of statutory notice, offence committed by the accused. During the trial

however it is brought on record that the guarantor/ surety of the said loan had issued cheque bearing No. 893337 dated 12/01/2009 for a sum of Rs.1,73,568/- and on dishonor of said cheque, STC No. 533 of 2009 came to be filed. Perusal of the said complaint shows that the said surety as well as the borrower were jointly and severally liable for repayment of the loan and the surety in discharge of the said liability of repayment of loan had issued the said cheque which came to be dishonored. There is no dispute about the fact that the said proceeding was compromised between the parties and award was passed on 04/03/2012 whereby the accused was acquitted under Section 257 of Cr.P.C.

4. This fact is conspicuously absent in the present complaint. Learned counsel for the applicant has sought to convince the Court that the said compromise did not pertain to the repayment of the loan amount but as the certificate was issued by the Asstt. Registrar of Co-operative Society under Section 101 of said Act, the compromise was arrived at between the parties and which has resulted in to the withdrawal of the complaint. Though such submission is sought to be made now there is no whisper about this in the complaint made before the learned JMFC. It is the accused who has brought the said evidence before the learned JMFC which indicates that the surety/guarantor of the said loan had issued cheque in the discharge of the said liability and the said complaint was

settled between the parties. It does not stand to any reason as to why these relevant facts were suppressed from JMFC. Needless to say that the act of suppression of the relevant facts itself is sufficient reason to dismiss the complaint.

5. Perusal of the record indicates that the surety had issued the cheque in discharge of the liability towards the repayment of the loan of present respondent and the said complaint is withdrawn as settled. No doubt it could have been open for the complainant to make submission to the effect that the amount towards repayment of loan has not been received against the said compromise and to prove the same by leading evidence. However in absence thereof now it cannot be permitted to complainant to take such plea, for reason that the accused was denied opportunity to meet the same. Resultantly this Court finds no perversity in the order of acquittal. Hence the application is dismissed.

(R. M. JOSHI, J.)

ssp