



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

CRIMINAL APPLICATION NO.392 OF 2023

IN

CRIMINAL APPEAL (ST.) NO.2707 OF 2023

(Warud Taluka Sarkari & Nimsarkari Karmchari Sahakari Patsanstha Marya. Warud Vs.
Mahendra s/o Sheshrao Nighot)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. K.R. Jain, Advocate for the appellant.
Mr. H.D. Futane, Advocate for the respondent.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- SEPTEMBER 19, 2024

By this application, the appellant is seeking leave to file an appeal against the acquittal which is passed by the Judicial Magistrate First Class, Warud in SCC No.596/2018 dated 18/01/2023.

2. Learned Counsel for the applicant submitted that the appellant is a Co-operative institution registered under the Maharashtra Co-operative Societies Act, 1960. It also doing the banking business. The accused applied for the loan accordingly, the loan of Rs.3,00,000/- was sanctioned to him on 03/09/2014. Thereafter, accused failed to pay the loan amount and in discharge of the legal and enforceable debt the accused issued a cheque bearing No.813125 dated 12/03/2018 for an amount of Rs.2,50,000/- drawn on State Bank of India, Branch at Warud. The said cheque was deposited by the applicant in its account for encashment but it was returned with an

endorsement “Funds Insufficient”, therefore, the complainant had issued notice to the accused on 20/03/2018. Though said notice was received by accused on 22/03/2018, the accused failed to pay the amount, therefore, complainant constrained to file the complaint against the present respondent.

3. After the learned trial Court has taken the cognizance, process was issued and the accused appeared before the Court. The appellant has adduced the evidence in support of his contention by examining the complainant as well as the other witnesses and also relied upon the documentary evidence. After appreciating the evidence, the trial Court come to the conclusion that the complainant failed to prove that there was a legal and enforceable debt and the cheque was issued against the said legal and enforceable debt and acquitted the accused. He submitted that there is no dispute as to the issuance of the cheque and the cheque bears signature of the accused. The ingredients of Section 138 of the Negotiable Instrument Act are established by the complainant, despite of the same trial Court held that the complainant failed to prove there was a legal and enforceable debt and cheque was issued against the said debt. Thus, the observation of the trial Court as to the ingredients of the offence and as to the evidence are erroneous. The appellant has every chance of success in the present appeal. In view of that, leave be granted to the appellant to prefer an appeal.

4. Learned Counsel for the respondent strongly opposed the said application on the ground that the foundational facts that the amount which is mentioned in the cheque was due on the date of the issuance of the cheque itself is not established by the complainant, and therefore, presumption will not attract. Learned trial Court has rightly considered this aspect and rightly acquitted the accused, and therefore, no ground is made out for grant of leave.

5. I have heard learned Counsel for both the parties. Perused the impugned judgment from which it reveals that there was a transaction of a loan which is obtained by the accused from the complainant – Society. After issuance of the cheque and signature on it, is not disputed by the accused. Only aspect which the complainant has to prove that the cheque was issued against the discharge of legal and enforceable debt. Admittedly, the complainant has not adduced the evidence to show that on the date of issuance of cheque, the amount of Rs.2,50,000/- was due from the accused. To attract the presumption against the accused, the complainant has to establish the foundational facts to show that on the day of issuance of cheque the amount of Rs.2,50,000/- was due from the accused and in discharge of the said legal and enforceable debt he has issued the cheque. Learned trial Court has rightly considered this aspect and rightly observed that as the foundational facts are not established by the complainant, and therefore,

presumption will not attract against the accused. I do not find any reason to interfere with the same by granting a leave as no grounds are made out by the complainant to grant a leave to prefer an appeal. In view of that, the application deserves to be rejected.

6. Accordingly, the application is rejected.

(URMILA JOSHI-PHALKE, J.)

**Divya*