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

CRIMINAL APPLICATION (APPA) NO. 762 OF 2023
IN
CRIMINAL APPEAL STAMP NO. 4003 OF 2023

M/s Shriram City Union Finance thr. Power of Attorney
Vs
Lata Umakant Khobragade

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

Mr. Parth Malviya, counsel h/f Mr. S.P. Bodalkar, counsel for applicant/appellant.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 03/07/2024.

1. By preferring this application, the applicant / appellant is seeking leave to prefer an appeal against the acquittal.

2. The appellant is the Cooperative Financial Organization registered under the Cooperative Societies Act. It is submitted by learned counsel for the appellant that the respondent stood as a guarantor to the loan obtained by the proprietor of J.T. Enterprises. He submitted that the present respondent, who has accepted the joint liability to repay the loan as a guarantor, and issued the cheque in discharge of that liability, which was dishonoured. After issuing the notice to the respondent, the respondent has not paid the amount within a stipulated period, and therefore, the appellant has filed criminal case bearing Session Case No. 1412/2020 against the respondent.

3. Learned trial Court erroneously appreciated the evidence and held that the liability of the guarantor is so expensive with principle borrower as per Section 128 of the Indian Contract Act.

4. He further observed that the notice was not issued to the principal borrower, and the cheque was issued against the security. He further submitted that, there are chances of manipulation in the said cheque, and acquitted the accused /respondent.

5. Learned counsel for the appellant submitted that this observation of the Court is only an assumption. In fact, there is no evidence adduced by the accused to show that any manipulation was in the cheque. As far as the issuance of the cheque is concerned, which was issued against the liability which is accepted by the present respondent as a guarantor, therefore the appellant has every chance of success in the present appeal and many arguable points, and therefore, leave is to be granted.

6. After due service of the notice, respondent failed to appear before the Court.

7. Heard learned counsel for the appellant, perused the impugned judgment, from which it reveals that the respondent is acquitted on the ground that cheque is not issued against discharge of enforceable debt as well as there was no notice to the principal borrower. Apparently, it appears that cheque was issued by the respondent in discharge of her liability to pay the loan amount, which she

has accepted as a guarantor. As cheque was issued by the present respondent in discharge of an enforceable debt, the notice was issued to her on dishonour of the cheque. Thus, the primary ingredients of the offence under Section 138 of the Negotiable Instruments Act, 1881 appears to be made out.

8. In view of the above situation, the appellant has made out the case for grant of leave. Accordingly, I proceed to pass the following order:

a) The criminal application (APPA) No. 762/2023 is allowed.

b) Leave is granted to appellant to file an appeal.

c) On registration of appeal, the notice be issued to the respondent returnable after four weeks.

[URMILA JOSHI-PHALKE, J.]