



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL
BY PRIVATE PARTY NO.116 OF 2024

Vinod Raghunath Patil

Age: 64 years, Occu: Service,

R/o. Mehrun, Jalgaon,

Tal and Dist. Jalgaon.

...Applicant

Versus

1. The State of Maharashtra

2. The Chairman,
Shri Ravindra Jagannath Bari,
Age: 55 years, Occu: Service,
Shri Sant Gajanan Co-operative
Credit Society Ltd. Jalgaon
Tal Jalgaon, Dist. Jalgaon

...Respondents

- Mr. A. K. Tiwari, Advocate for the Applicant
- Mr. S. G. Sangle, Addl. PP, for Respondent No.1/State
- Ms. M. V. Narwade, Advocate for the Respondent No. 2

CORAM : ABHAY S. WAGHWASE, J
RESERVED ON : JANUARY 05, 2026
PRONOUNCED ON : JANUARY 06, 2026

JUDGMENT :

1. This leave application is at the instance of original complainant, who had instituted Section 138 of Negotiable Instruments Act, 1881 (for short 'the Act') proceedings against present Respondent and the same came to be allowed by learned JMFC, Jalgaon vide judgment and order dated 03.10.2016; but in appeal, said judgment

came to be overturned by the learned First Appellate Court by acquitting the accused from said charge.

2. Learned counsel for Applicant/Original Complainant would submit that, present Applicant is a member of the Maharashtra Cooperative Society, namely, Sant Gajanan Co-operative Credit Society Ltd, Jalgaon (for short 'the Society'), wherein, he had kept fixed deposits. When the fixed deposits were sought to be withdrawn, cheque was issued by Respondent, who was a chairman of the society, under his signature and when cheque was presented for realization, the same got dishonoured. Therefore, as required under law, legal notice has been dispatched. Accused refused to accept the said notice, as such, it was good notice. Complainant adduced his own evidence as well as placed on record necessary documentary evidence i.e. bank memo, copy of legal notice, postal acknowledge and cheque in question. Accused though appeared did not contest the proceedings and chose to remain absent and even refused to cross-examine the complainant. Therefore, according to learned counsel, presumption available under the Act came into play and learned Trial Court was pleased to convict accused vide judgment and order dated 03.10.2016. That, the said judgment and order was legally justifiable. That, appeal maintained by present Respondent was without any merits, but the same came to be allowed

and learned First Appellate Court set aside the order of conviction holding that the Society is not made party. However, according to learned Counsel, signature over the cheque was not disputed or denied and even date to be legally enforceable was not disputed and therefore, according to him, learned First Appellate Court ought not to have acquitted the accused. He lastly submitted that, there is point on merit to be agitated in the appeal and hence, he urges for leave.

3. Learned Counsel for Respondent/Original Accused would support the judgment and order of learned First Appellate Court by pointing out that, admittedly, fixed deposit transaction was with the Society, however, society was not made party. She would point out that, initially Manager of the Society was also arraigned as an accused but for the reasons best known to the complainant, manager who is looking after day to day business of the Society got deleted and matter proceeded only against present accused, who was the Chairman of the Society. For above reasons, she canvasses in favour of judgment and order of learned First Appellate Court and prays to refuse leave.

4. Heard both sides. Perused the papers.

5. It seems that S.C.C No. 2484/2009 was initiated by present Applicant on the premise that, he had maintained fixed deposits with

the Society and for domestic reasons, he sought return of the fixed deposit amount. Cheque was issued under the signature of Chairman but on its presentation, cheque was returned dishonor vide memo dated 12.09.2009 with remark that 'singly sign'. Thereafter, legal notice was dispatched but as it was not claimed, Section 138 of the Act proceedings were initiated. It appears that, Accused appeared and pleaded not guilty but did not participate in the trial and as such, did not cross-examine complainant as well as failed to appear and answer statement under Section 313 of Code of Criminal Procedure. Learned JMFC, on the strength of evidence of complainant, convicted present Respondent under Section 138 of the Act by judgment and order dated 03.10.2016 holding that there was presumption in favour of complainant and the same had remained un-rebutted.

6. It appears that, dissatisfied by the above order of conviction, accused preferred Criminal Appeal No. 126/2016 before the Court of learned Additional Sessions Judge, Jalgaon, who after hearing both sides, vide judgment and ord dated 09.10.2023 pleased to allow the appeal by setting order of JMFC and acquitted the accused.

7. Now, appeal is sought to be preferred against said judgment and hence, instant leave application. For above discussion and after going through the record, impugned judgment and order herein, it

transpires and there is also no dispute that, complainant had kept fixed deposits in the Society. Toward return of the deposit, cheque was allegedly issued under the signature of Chairman i.e. present Respondent and the same got dishonored and further action under section 138 of the Act. Main contention raised by learned Counsel for Applicant is that, signature over the cheque caused by Respondent accused was not denied nor there is denial of legally enforceable date and as accused failed to rebut the same, presumption is available under law and conviction granted by Trial Court ought not to have been disturbed by the learned First Appellate Court. On the other hand, learned counsel for the Respondent submits that, complainant itself was not maintainable as the Society was not made party and that learned First Appellate Court has rightly observed and held so while acquitting the accused.

8. In above background, it would be useful to refer to observations of Hon'ble Apex Court in case of **Bijoy Kumar Moni vs. Paresh Manna and Another**, Criminal Appeal No. 5556 of 2024, more particularly, in paragraph 50, which reads thus:

50.A catena of decisions of this Court have settled the position of law that in case of a cheque issued on behalf of a company by its authorised signatory, prosecution cannot proceed against the such authorised signatory or

other post-holders of the company as described under Section 141 of the NI Act, unless the company who is the drawer of the cheque is arraigned as an accused in the complaint case filed before the magistrate. Further, vicarious liability can only be affixed against the directors, authorised signatories, etc. of the company after the company is held liable for the commission of offence under Section 138.

9. There is no dispute that, present Respondent was shown as Chairman and was original accused no. 2 before Trial Court. Record shows that, initially manager was also made party but at the instance of complainant himself, said manager was got deleted after seeking permission of the Court. Admittedly, complaint is lodged against the Society but only Respondent, in the capacity of chairman, is arraigned without making the Society a party. It was expected to make the Society also a party and then to implead the office bearers, who were incharge of the day to day affairs of the society. Therefore, only present Respondent, who is named as Chairman, was sought to be prosecuted. Admittedly, transaction of complainant was with the Society and, therefore, the Society was also a necessary party, it being legal entity. Further, there seems to be no averment in the complaint that present Respondent was solely looking into the day to day affairs of the Society. It is also emerging that, cheque under dispute was returned by the bank with specific remark that it was 'singly sign' and not signed by Manager

or Authorized person. Consequently, on technical aspect itself, complaint fails. This aspect, which was lost sight by Trial Court, has been rightly appreciated by First Appellate Court. Therefore, when no case is made on merit to accord leave, the same is required to be refused. Hence, I proceed to pass following order:

ORDER

- (a) Leave is refused.
- (b) Application for leave to appeal by private party is rejected.

(ABHAY S. WAGHWASE, J.)

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