

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.1275 OF 2012
WITH
CRIMINAL APPLICATION NO.1276 OF 2012
WITH
CRIMINAL APPLICATION NO.1277 OF 2012
IN
CRIMINAL APPEAL NO. OF 2012**

Shri Sainath Nagari Sahakri
Patsanstha, Maryadit, Walivade

...Applicant

vs.

Sunil Bandu Chougule & Anr.

...Respondents

Mr. Chetan G. Patil for the Applicant.

Mr. Sagar Mane for the Respondent No.1.

Mr. V. B. Konde-Deshmukh, APP, for the Respondent No.2–State.

CORAM : A. H. JOSHI, J.

DATE : 30th August, 2013

1] This is an application for leave to appeal. The cheque issued by the respondent in favour of the society dated 12th April, 2011 for Rs.53,751/- was dishonoured with bank memo assigning the reason "signature differs". The notice demanding the payment was served. It is not replied by the accused.

2] The complainant filed a case under Section 138 of the Negotiable Instrument Act.

3] The complainant examined two witnesses namely Chairman of the complainant and one more witness namely Sachin B. Pawar.

4] The learned Magistrate held while deciding the case that:-

- (a) Signing of an agreement for payment, the issuance of cheque and service of notice are proved.
- (b) The defence suggested by the accused that the amount of his liability was refunded and acknowledged by the committee members that nothing had remained to be recovered from the accused appeared to be acceptable.
- (c) The submission of the complainant that a paper signed in blank which was signed by committee members, was misused by the accused was not probable.

5] Learned Magistrate assigned a reason in paragraph No.14 to the effect that that the accused was Assistant Secretary and his functioning was supervised by the Secretary as well as managing committee and the story which was foundation of the case as regards entire liability to be of the accused did not appear to be probable, particularly in the background of the defence of the accused that Exh.24 is the document signed by the Directors.

6] In answer to a query made by this Court, the learned advocate for the applicant had answered that in a suit/dispute under Section 91 or case for enquiry under Section 88 of Maharashtra Co-operative Societies Act for recovery against the accused was not taken.

7] Therefore, while considering as to whether any interference in appeal was necessary, the fact that the prosecution did not initiate proceedings for recovery before a forum available under Maharashtra Co-operative Societies Act, has to be kept in mind.

8] In this appeal against acquittal, it is not demonstrated that discussion contained in paragraph No.13 of the judgment relating to the reasons as to why the prosecution is disbelieved and the reasons and circumstances recorded in paragraph No.14 are not demolished. It is not shown that reasons recorded by the Judge are not justified and can never emerge from the record and hence those are liable to be denoted as perverse.

9] Seeking conversion of an order of acquittal in conviction, the finding have shown to be perverse. It would be hard to believe in support of such proposition as a fact, in present case.

10] In the result, this Court is satisfied that the appeal has no merit and there are no ground to grant leave.

11] In the result, this Court finds that an appeal is devoid of merit. Application for leave to appeal is dismissed.

(A. H. JOSHI, J.)