

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL REVISION APPLICATION NO. 20 OF 2015**

Sarika Shirodkar,
Major of age,
R/o B2/501,
Boshan Homes,
Mapusa Calangute Road,
Mapusa – Goa.

... Petitioner

Versus

1. The Bicholim Urban Co-operative
Bank Limited,
A Co-operative Society,
Registered with the Registrar of
Co-operative Societies,
and having registered office at
Nandanvan Bicholim,
Represented by its Manager,
Shri V.G. Prabhudessai,
Major age,
R/o Kamat Nagar,
Ashwini Apartments,
Porvorim – Goa.

2. Public Prosecutor,
High Court of Bombay at Goa.

... Respondent

Shri Galileo Francisco Teles, Advocate for the Petitioner.

Shri Ramchandra G. Ramani, Advocate for the Respondent No. 1.

Shri Mahesh Amonkar, Additional Public Prosecutor for the
Respondent No. 2.

CORAM:- C. V. BHADANG, J.

DATE:- 26th MARCH, 2015

ORAL JUDGMENT:

Admit.

2. Shri Ramani, learned Counsel waives notice for the contesting respondent no. 1 and Shri Amonkar, learned Additional Public Prosecutor waives notice for the respondent no. 2. Heard finally with the consent of the parties.

3. The brief facts are that the petitioner has been convicted for the offence punishable under Section 138 of the Negotiable Instruments Act, by the learned Judicial Magistrate First Class, Bicholim, in a complaint filed by the first respondent. The petitioner has challenged the same in Criminal Appeal No. 95/2010, which is pending before the learned Additional Sessions Judge at Mapusa.

4. It appears that a contention is raised on behalf of the petitioner that the signatory to the original complaint, had no authority to institute the complaint on behalf of the first respondent-Bicholim Urban Co-operative Bank.

5. It appears that on behalf of the first respondent, an application (Exhibit D-13), purportedly under Section 391 of the Code of Criminal Procedure (Cr.P.C., for short) came to be filed on 11.11.2010, seeking permission to produce the resolution dated 30.10.2010 and also to tender/admit and read the same in evidence. The said resolution purports to ratify the filing of the complaint by Shri V.G. Prabhudessai, for and on behalf of the first respondent. That application was allowed by the learned Assistant Sessions Judge, Mapusa by order dated 05.02.2011.

6. It appears that the petitioner had filed Criminal Revision Application No. 20/2011, challenging the said order which was permitted to be withdrawn on 25.09.2012. The perusal of the order of this Court shows that liberty was given to the petitioner to urge all contentions on merits in appeal, as available in law, before

the Appellate Court. According to the learned Counsel for the petitioner, the application (Exhibit D-13), was not allowed in its entirety and the learned Additional Sessions Judge had only allowed the production of resolution. Be that as it may, the first respondent filed yet another application (Exhibit 30) on 08.07.2014, praying that the respondent may be allowed to tender in evidence the resolution and for that purpose re-allow the examination of the complainant and the resolution be admitted. This application was opposed on behalf of the petitioner by filing a reply on 28.10.2014. The learned Additional Sessions Judge by an order dated 29.01.2015, has allowed the said application thereby, permitting the first respondent to tender the resolution in evidence. The perusal of the said order would show that the learned Sessions Judge has interpreted the earlier order dated 05.02.2011, in order to hold that the application at Exhibit D-13 was in fact allowed in its entirety. The learned Additional Sessions Judge has found that any other interpretation would lead to absurd and ridiculous result and mere production of documents without permitting it to be proved or read in evidence, cannot be countenanced. It is this order, by which the petitioner is now

aggrieved and has approached this Court, in the present criminal revision application.

7. I have heard Shri Teles, learned Counsel for the petitioner and Shri Ramani, learned Counsel for the first respondent.

8. It is submitted on behalf of the petitioner that by order dated 05.02.2011, the application (Exhibit D-13) cannot be said to be allowed in its entirety. It is submitted that the first respondent has not challenged the said order and as such, the said order dated 05.02.2011 has attained finality. It is submitted that in such circumstances, it was not permissible for the first respondent to file another application for similar relief. It is submitted that the learned Additional Sessions Judge had interpreted the earlier order, which would amount to review of the same. It is, therefore, submitted that the impugned order needs interference.

9. The learned Counsel for the respondent no. 1 has supported the impugned order. It is submitted that the learned

Assistant Sessions Judge has rightly allowed the application (Exhibit D-13) as prayed and any other interpretation would lead to absurd result. It is submitted that the petitioner would get an opportunity to cross examine the witness and thus, no prejudice is demonstrated, and as such, the criminal revision needs to be dismissed.

10. On hearing the learned Counsel for the parties and on going through the impugned order, I find that no case is made out for interference. The perusal of the application (Exhibit D-13) would show that the first respondent had prayed for leave to produce on record the resolution dated 30.10.2010 and also to tender the same in evidence. It was also prayed that the said resolution be taken and tendered in evidence. The order dated 05.02.2011 shows that the request of the respondents for taking the said resolution on record is allowed. It does not show that any of the prayers made in the application was rejected as such, or that, the application was partly allowed. Be that as it may, *prima facie* at this stage, no exception can be taken to the finding of the learned Assistant Sessions Judge that mere production of

documents without opportunity to prove or read the same in evidence would be inconsequential and superfluous and such interpretation would lead to absurd result.

11. The learned Counsel has placed reliance on a decision of this Court in the case of "**M/s Sri Balaji Agencies Pvt. Ltd. Vs. M/s Samudra Ropes Pvt. Ltd. and Others**", reported in **2011 ALL MR(Cri) 239**, in order to submit that such an attempt to produce the resolution ratifying the authority of the complainant, particularly at a belated stage cannot be accepted or acted upon. The learned Counsel has submitted that, any ratification has to be done, before the accused enters his defence and it cannot be done after the acquittal of the accused.

12. I find that the criminal appeal is still pending before the learned Additional Sessions Judge and it would not be appropriate to record any finding at this stage so as to prejudice either of the parties. Needless to mention that the petitioner would get an opportunity to raise all the contentions including the contention as to whether such resolution can validly and justifiably cure the

defect in the complaint. Subject to this, the revision application is dismissed, with no order as to costs.

C. V. BHADANG, J.

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