

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 108 OF 2014

IN

STAMP NUMBER MAIN NO. 2944 OF 2013

INDUSIND BANK LTD. REP. BY THROUGH
ITS P.O.A. HOLDER MR. SANIT
BANDODKAR

... Applicant

Versus

MR. JOSEPH RAJAN FERNANDES

... Respondent

Mr. Pavithran A.V, Advocate for the Applicant.

Mr. J. Abreu Lobo, Advocate for Respondent.

Coram:- C. V. BHADANG, J.

Date:- 22nd June, 2015

P.C.:

Heard Mr. Pavithran A.V. learned counsel for the applicant and
Mr. J. A. Lobo, learned counsel for the respondent.

2. The applicant had filed a complaint under section 138 of the Negotiable Instruments Act for dishonour of the cheque before the learned Judicial Magistrate First Class at Panaji vide Criminal Case No.593/2009/B. It appears that on behalf of the applicant PW.1 Sunil Bhimrao Akkatangerhal was examined who had produced the certified copy of the Power of Attorney. This witness was partly cross examined and thereafter failed to remain present and as such

could not be cross examined further. It appears that PW.1 Sunil had admitted that he does not know whether there was any resolution from the Board of Directors of the bank in favour of one Mr. Kerkar, who was the signatory to the complaint. One Mr. Sanit S. Bandekar was examined as PW.2 on the point of grant and disbursement of the loan and about issuance of the notice. A Statement of Account (Exhibit 43) was produced on record. The learned Magistrate has found that there were two repayments in the amount of Rs.76,250/- dated 31/3/2007 and one of Rs.60,000/- dated 16/10/2006 which have not been properly reflected in the statement of account. This witness also admitted that the receipt dated 31/5/2007 for Rs.80,000/-, the one dated 29/9/2007 for Rs.41,500/- and another receipt dated 29/9/2007 for Rs.41,500/- although reflected in Exhibit 43 (10) are not reflected in the statement of account. In such circumstances, the learned Magistrate answered the point no.1 in the negative and proceeded to dismiss the complaint acquitting the respondent.

3. On hearing the learned counsel for the parties and on perusal of the impugned judgment it appears that the finding of acquittal is based on appreciation of evidence on record. It is not shown that the appreciation or the finding is perverse or that the view taken by the learned magistrate is an impossible view. In such circumstances no case for interference is made out. In the result the criminal application is hereby dismissed.

4. Criminal Appeal Stamp no.2944 of 2013 stands rejected.

C. V. BHADANG, J.

ap/-