

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL REVISION APPLICATION NO. 10 OF 2012**

Mr. Vishant Satyavijay Naik,
S/o Satyavijay Naik,
37 years of age, married,
service, r/o H. No. 12,
Khazan Pale, Bicholim, Goa.
Presently lodged at Sada Jail, Vasco,
Represented herein through his next
friend, Mrs. Vidhya Vishant Naik,
32 years of age,
wife of Vishant Naik,
r/o H. No. 12,
Khazan Pale, Bicholim, Goa.

... Petitioner

Versus

1. Shri Shreyans Kumar Jain,
Major in age, Occupation Business,
Sole proprietor of Moksha Jain,
Having office at Shop No. 4,
Uzai Apartment, Colma Road,
Navelim, Salcete – Goa.
2. The State,
Represented by
the Public Prosecutor,
Panjim, Goa.

... Respondents

Shri Gaurish Agni, Advocate under Legal Aid for the Petitioner.

Shri Galileo Teles Advocate for the Respondent No. 1.

CORAM:- C. V. BHADANG, J.

RESERVED ON:- 30th MARCH, 2015

PRONOUNCED ON:- 16th APRIL, 2015

JUDGMENT:

Heard. Admit. Shri Teles, learned Counsel for the respondent no. 1 waives notice. Heard finally with the consent of the parties.

2. By this revision application, the petitioner/original accused is challenging the judgment and order dated 14.03.2012 passed by the learned Additional Sessions Judge, South Goa, Margao in Criminal Appeal No. 35/2011, by which the judgment and order dated 30.03.2011, passed by the learned Judicial Magistrate First Class at Margao in Criminal Case No. 244/NIA/2009/III, thereby convicting the petitioner for offence punishable under Section 138 of the N.I. Act and sentencing him to pay compensation of Rs.2,50,000/- and in default to undergo imprisonment for a period of six months, has been confirmed.

3. The brief facts necessary for disposal of the revision application may be stated thus:

That Shriram Transport Finance Company Limited (Shriram Finance, for short), is a financial company in the business of granting vehicle finance. A proprietary concern namely, Moksha Jain, through its proprietor, Shri Shreyans Kumar Jain, is acting as the intermediary/third party administrator (TPA), in the matter of granting of vehicle finance, by Shriram Finance. The petitioner intended to purchase a vehicle and as such, had approached the complainant, Shreyans Kumar Jain, sometime in October, 2008 for grant of loan. The complainant had arranged for a loan of Rs.1,50,000/- to the petitioner, from Shriram Finance. The parties accordingly executed a loan agreement dated 14.11.2008 (Exhibit-14) which was a tripartite agreement between the petitioner, Shriram Finance and the complainant-Moksha Jain. The loan was accordingly disbursed and the petitioner purchased a vehicle bearing registration No. GA-01-J-2088. However, subsequently, the petitioner defaulted in the matter of repayment of the loan. On demand being made, the petitioner issued a cheque (Exhibit 6-C), in the sum of Rs.1,99,500/- in favour of Moksha Jain on 05.10.2009. When the said cheque was presented for encashment, it was dishonoured on account of insufficient

funds. Hence, the complainant issued a statutory notice dated 03.11.2009, which was returned as unclaimed. Thus, the complainant-Moksha Jain filed a complaint under Section 138 of the Negotiable Instruments Act (N.I. Act, for short) before the learned Judicial Magistrate First Class at Margao. At the trial, Shri Shreyans Kumar Jain examined himself (PW-1) alongwith Shri Ajit Arsekar (PW-2), Branch Manager, Bank of Baroda, Ponda Branch; Shri Conrod Jacques (PW-3), Bank Manager of Axis Bank, Margao Branch and Shri Gurudas Rege (PW-4), Bank Manager, Bank of Baroda, Panjim Branch and produced certain documents including the subject cheque (Exhibit 6-C), and the loan agreement (Exhibit-14). The petitioner did not lead any evidence in defence.

The learned Magistrate came to the conclusion that the necessary ingredients of the offence punishable under Section 138 of the N.I. Act have been proved and had convicted and sentenced the petitioner as aforesaid.

4. Feeling aggrieved, the petitioner filed Criminal Appeal No. 35/2011, before the learned Additional Sessions Judge at Margao, which was dismissed on 14.03.2012. The learned

Sessions Judge negated the contention raised on behalf of the petitioner that the cheque could not be said to be issued for discharge of legally enforceable debt/liability. The material contention was that financial assistance was admittedly granted by Shriram Finance and not by Moksha Jain, which is the complainant. It is contended that the loan was repayable to Shriram Finance and not Moksha Jain. In that view of the matter, the complainant-Moksha Jain is not having any entitlement to receive the amount. The learned Sessions Judge has considered the terms of the agreement (Exhibit-14) and in particular, paragraph 5(h) thereof and came to the conclusion that the EMI's were agreed to be paid to the complainant-Moksha Jain. The learned Sessions Judge has relied upon the decisions of the Hon'ble Supreme Court in the cases of **K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another**, (1999) 7 SCC 510, **Hiten P. Dalal Vs. Bratindranath Banerjee**, AIR 2001 S.C. 3897 and **Rangappa Vs. Sri. Mohan**, 2010 (1) DCR 706. Feeling aggrieved by the impugned judgment, the petitioner has come up in revision.

5. I have heard Shri Agni, learned Counsel for the petitioner and Shri Teles, learned Counsel for the first respondent.

6. It is submitted by Shri Agni, learned Counsel for the petitioner that admittedly the first respondent had only "arranged for the loan", which was granted by Shriram Finance. It is submitted that the loan was also repayable to Shriram Finance and not to Moksha Jain. The learned Counsel has taken me through the contents of the loan agreement (Exhibit-14) and in particular to clause 2.2 thereof, in order to submit that the first respondent, at the highest, had an authority only to physically collect the cheque. It was submitted that the cheque which was drawn in favour of the first respondent thus, cannot be said to be in discharge of any legally enforceable debt or liability, in as much as the petitioner did not owe anything to the first respondent. It is thus submitted that the finding recorded by the learned Magistrate and confirmed by the learned Sessions Judge would be patently erroneous and required interference by this Court. It is submitted that the so called joint venture agreement between the first

respondent and Shriram Finance has not been produced on record. It is also submitted that PW-1, Shreyans Kumar Jain had no authority to depose on behalf of Shriram Finance.

7. On the contrary, it is submitted by Shri Teles, learned Counsel for the first respondent that the loan agreement-Exhibit 14 has to be read as a whole. It is submitted that clauses 3.1, 5(h) and 7.5 thereof, would clearly show that the first respondent had all the authority to act for and on behalf of Shriram Finance in recovering the loan. The learned Counsel was at pains to point out that the loan agreement *inter alia* stipulated that payment to the first respondent, would be a valid discharge, as against Shriram Finance, which would leave no manner of doubt that the first respondent could legitimately recover the amount. Thus, it is submitted that the findings recorded by the Courts below are perfectly legal and based on oral and documentary evidence on record. It is submitted that, in the absence of the finding being perverse, no interference is called for, in the exercise of revisional jurisdiction of this Court.

8. On hearing the learned Counsel for the parties and on considering the circumstances and rival submissions made, I find that no case for interference is made out.

9. There cannot be any manner of dispute that the amount was advanced and the financial assistance was granted by Shriram Finance. It is also not disputed that the petitioner has availed of loan of Rs.1,50,000/-, which was disbursed and the petitioner had purchased the vehicle. From the submissions advanced at the bar, the material contention raised is only about cheque being issued for discharge of legally enforceable debt or liability. In such circumstances, the issuance of cheque dated 05.10.2009, its dishonour and consequent issuance of notice, which are the necessary ingredients to be satisfied, are not in dispute. The material point is whether the complainant-Moksha Jain can be said to have any legally enforceable debt or liability in its favour. It is not disputed that Moksha Jain is a proprietary concern of which Shreyash Kumar Jain is the proprietor. The subject cheque is in favour of Moksha Jain. The execution of the loan agreement which is a tripartite agreement is also not in dispute. The controversy

essentially revolves round the question, whether the cheque issued in favour of Moksha Jain is towards discharge of a legally enforceable debt or liability, when admittedly the loan has been advanced by Shriram Finance. That is precisely the issue that falls for determination in this case. It is trite that the loan agreement-Exhibit-14 has to be read as a whole. No clause can be read in isolation or independent of context. The learned Counsel for the petitioner has placed strong reliance on clause 2.2 which falls under the Head, "Financing Arrangement", and which reads as under:

"2. FINANCING ARRANGEMENT

2.1

2.2 The borrower shall agree and undertake at all times during the currency of this agreement, to make the payment of all the installments due on the respective due dates including all other monies due and owing towards Shriram and the borrower further agrees and acknowledge that the borrower shall remain liable and shall continue to pay the EMI (installments) on the respective due dates regardless of whether the vehicle is under repair or not working or not delivered or where the vehicle is delivered, the same has been

confiscated, or taken into custody by any authority or is stolen. The borrower shall be liable to pay to Shriram (whatsoever) amounts that have been paid by Shriram, if any, towards advance, booking costs etc. to the dealer on behalf of the borrower. Such amounts shall be repayable to Shriram together with interest @ 2.25% per month, compounded monthly and shall form part of the total repayment obligations under this agreement."

10. It is thus submitted by the learned Counsel for the petitioner that it is Shriram Finance which has agreed to provide financial assistance and the amount is repayable to Shriram Finance and that Moksha Jain cannot have any authority to obtain a cheque in its favour. The learned Counsel made an attempt to make a distinction between Moksha Jain obtaining a cheque in its favour and a situation where Moksha Jain only physically collects the cheque in favour of Shriram Finance.

11. I have given my anxious consideration to the submissions made, however, I am unable to persuade myself to agree with the argument so advanced, on behalf of the petitioner.

12. There are other recitals in the agreement which would make it amply clear that Moksha Jain for all practical purposes had authority to act for and on behalf of Shriram Finance, for the purpose of said loan, in the tripartite agreement to which the petitioner was a party. Before going to the said recitals in the agreement it is necessary to state that the complainant-Moksha Jain was essentially, acting as a intermediary/facilitator between Shriram Finance and the petitioner. Thus, Moksha Jain was a third party administrator (TPA) in the matter of advancing of loan. The clauses 3.1, 5(h), 6.1 and 7.5 of the loan agreement (Exhibit-14), may be reproduced as under:

"3.1 The borrower shall agree and undertake to make payment of all the EMI and all other monies due and payable to Shriram on the due dates as specified and set out in the Schedule and handover the same with MOKSHA JAIN, who shall be primarily responsible to demand and collect and realise on behalf of Shriram installment including of interest and all other monies every month as mentioned in the Schedule and that payment of the amounts to MOKSHA JAIN shall be considered as effectual discharge of repayment of loan obligations owing and due towards Shriram.

5(h) The borrower hereby agrees and acknowledges that Shriram has authorised MOKSHA JAIN to undertake all collection, repossession and other related activities on its behalf and to that extent the borrower agrees to make payment of EMI's, Late Payment Charges, Penalty for Bouncing Cheque to MOKSHA JAIN as may be required. The borrower also agrees to MOKSHA JAIN's right to repossess the vehicle financed on behalf of Shriram in case the borrower is in default of the loan repayment.

6.1 The borrower may repay the entire loan by giving to Shriram and/or MOKSHA JAIN not less than 7 days notice in writing of his/her intention to exercise such option to terminate the loan. The borrower shall pay to MOKSHA JAIN the stipulated installments and other sums due upto the date of such termination. On such settlement MOKSHA JAIN shall return the post dated cheques to the borrower and shall re-imburse Shriram the outstanding amounts due and payable to Shriram under this agreement.

7.5 It is expressly agreed between the parties hereto that Shriram has duly authorised MOKSHA JAIN for the purpose of enforcing the terms of this

agreement with the borrower and MOKSHA JAIN shall have the right to enforce all right and remedies available to Shriram under the terms of this agreement. It is also expressly agreed between the parties hereto that Shriram shall have the rights and remedies available to Shriram under the terms of this agreement against the borrower either directly or through any other authorised agent in the event of cessation/termination of the representative relationship arrangement."

13. The conjoint reading of these clauses would make it clear that the first respondent was primarily responsible for demanding and collecting the installments for and on behalf of Shriram Finance.

Clause 5(h) makes it further clear that Shriram Finance had authorised, Moksha Jain to undertake all collection, repossession and other related activities on its behalf and to that extent the borrower agreed to make payment of EMI's, late payment charges, penalty for bouncing cheque to Moksha Jain. The petitioner has also acknowledged Moksha Jain's right to re-possess the vehicle financed "for and on behalf of Shriram

Finance”, in case, the borrower is in default of the loan repayment.

Clause 6.1 would make it clear that, in the event the applicant/borrower decides to prepay the loan, a notice has to be given to Shriram Finance and/or Moksha Jain. It is further stipulated that the borrower shall pay to Moksha Jain stipulated installments and pay other sums upto the date of such termination. On such settlement, Moksha Jain was to return the post dated cheques to the borrower and to reimburse to Shriram Finance the outstanding amounts due and payable.

Last, but not the least, clause 7.5 stipulates that the parties expressly agreed that Shriram Finance had duly authorised, Moksha Jain for the purpose of enforcing terms of this agreement with the borrower and Moksha Jain shall have a right to enforce all rights and remedies available to Shriram Finance under the terms of this agreement. It also reserves residual right of Shriram Finance to have all those rights and remedies either directly or through authorised agent, in the event of “cessation/termination of the representative relationship arrangement”. Thus, during the subsistence of this agreement between Shriram Finance and Moksha Jain, Moksha Jain had all

the authority to act for and on behalf of Shriram Finance.

14. In view of this, I do not find that the concurrent finding recorded by the Courts below needs interference, in the exercise of revisional jurisdiction of this Court.

15. In the result, the revision application is dismissed with no order as to costs.

C. V. BHADANG, J.

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