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IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 136 OF 2014

Syndicate Bank,
a Nationalized Company
Constituted under the Banking
Companies (Acquisition and transfer
of undertaking) Act, 1970, having its
head office at Manipal
Karnataka State and one of its Branches
at Salvador-Do-Mundo Bardez Goa,
represented by its Senior Branch Manager,
Mr. Arun Jayadev Likhite, Major of age,
duly authorised to sign and verify the
appeal.

... Applicant

V e r s u s

1. Mr. Krishnakumar Padmukhe,
major of age,
proprietor M/s Chandrakant Plastic,
Shop No. CCP, B-110, First Floor,
New Municipal Market, Panaji Goa.

2. State,
Through Public Prosecutor,
High Court of Bombay at
Panaji Goa.

... Respondents

Mr. Ajay Kumar V., Advocate for the applicant.

None for the respondents.

CORAM : K. L. WADANE, J

ORDER RESERVED ON : 22.04.2015

ORDER PRONOUNCED ON : 06.05.2015

O R D E R :

This application is filed by the original complainant.

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2. The brief facts of the case may be stated as follows :

Respondent no.1 has obtained a loan of Rs.1,00,000/- from the complainant bank for the purpose of working capital and for the repayment, respondent no.1 issued a cheque for an amount of Rs.45,000/- drawn on the Goa State Co-op. Bank Ltd., Panaji. The said cheque was dishonoured on account of funds insufficient and it was returned to the complainant along with memo. The complainant/applicant then sent a legal notice to respondent no.1 to pay an amount of Rs.45,000/- within 15 days. The respondent no.1 failed to pay the amount. Hence, the complainant filed a complaint under the provisions of Section 138 of the Negotiable Instrument Act. By judgment and order dated 22.04.2014 passed by the learned J.M.F.C., Panaji, the respondent no.1 is acquitted. Hence, the complainant filed this application.

3. I have heard the arguments of Mr. Ajay Kumar, learned counsel appearing for the applicant. The respondent no.1 though served with the notice remained absent and respondent no.2 is a State being a formal party. With the help of the learned counsel appearing for the applicant, I have gone through the reasons recorded by the learned Trial Court from which it is seen that the learned Magistrate has acquitted the accused. That, initially the

complaint was filed by the then Branch Manager and Power of Attorney Mr. Shivappa Halli. The power of Attorney was given by the Directors of the bank namely Mr. Mallya and Mr. Karkera by a separate resolution. However, the complainant has examined a witness Mr. Likhite, a current branch manager and power of attorney was issued to him by the Directors namely Saxena and Shrimali. Further, it is seen from the record that the evidence of the complainant is disbelieved on the ground that the power of attorney is not submitted along with the copy of the board resolution and the current branch manager do not have personal knowledge about the transaction.

4. During the course of the arguments, Mr. Ajay Kumar, learned counsel has argued that the complainant is a bank and the job of the branch manager is transferable job and in its place his successor has to take charge and on behalf of the bank its employee can very well depose.

5. Looking to the reasons recorded by the Trial Court and the arguments advanced by Mr. Ajay Kumar, learned counsel appearing for the applicant, it appears that there are debatable points and there are grounds for appeal. Therefore, without going deeply into the merits of the matter, I am of the opinion that the

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permission has to be granted to the complainant/applicant to file an appeal. Hence, the application is allowed and the permission is granted to the applicant to file an appeal. The appeal be registered accordingly.

K. L. WADANE, J

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