IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NO. 191 OF 2014

Vividha Urban Co-operative
Credit Society Ltd, With its
Head Office at Navelim,
Bicholim-Goa and branch at
Ponda-Goa, Ponda Branch,
duly represented by,
Shri Balwantrao Jaywantrao
Desai, Son of Jaywantrao Desai,
Aged 41 years, service,
R/o House no. 106,
Maulingtedwada, Sanqueli-Goa,
Authorised representative of
the society ... Appellant/Applicant

Versus

1) Mr. Ditendra Chandrakant Kerkar
Son of Chandrakant Kerkar
Major in age (age not known)
R/o H.No.78, Durga Bhat,
Ponda Goa

2) State of Goa, through P.P.
High Court of Bombay at Goa ... Respondents

Mr. G. Agni, Advocate for the applicant.

Mr. Arjun F. Naik, Advocate for the respondent no. 1.

CORAM :- **C. V. BHADANG, J.**

Date : 8th April, 2015.

ORAL ORDER :

This is an application for leave to appeal against acquittal.

2. The brief facts are that the applicant is a Urban Credit Co-operative Society of which the first respondent is a member. The applicant had sanctioned a loan of Rs.3,00,000/- to the first respondent for purchase of a tanker on 13/07/2001. The loan was repayable in 60 monthly instalments of Rs.7,350/-. According to the applicant, the first respondent committed default in repayment of the loan as per the scheme of instalments. On 02/09/2012, the first respondent had issued a cheque in the sum of Rs.5,34,355/- in favour of the applicant, towards discharge of the loan liability. That cheque was dishonoured for insufficiency of funds. Hence, the applicant issued a notice on 17/09/2012, which was replied to by the first respondent. As the first respondent failed to pay the amount, the applicant filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (the Act, for short) against the first respondent in the Court of Judicial Magistrate, First Class, at Ponda, which was registered as Criminal Case No. 803/OA/NIA/2012/A.

3. On behalf of the applicant, its authorised officer Mr. Balwantrao Dessai was examined as a PW1. The first respondent did not lead any evidence. The learned Magistrate, on hearing the

parties, came to be conclusion that the applicant has failed to prove that the said cheque was issued in discharge of a legally enforceable debt or liability. In the face of such finding, the complaint came to be dismissed, by a judgment and order dated 23/06/2014.

4. Feeling aggrieved, the original complainant seeks leave to appeal against acquittal.

5. I have heard Shri Agni, learned Counsel for the applicant and Shri Naik, learned Counsel for the first respondent. With the assistance of the learned Counsel, I have perused the record produced and the impugned judgment.

6. It is submitted by the learned Counsel for the applicant that the documents executed in respect of the loan contain a clause, authorising the Bank to modify the rate of interest. The learned Counsel, in particular, has referred to clause 16 thereof. It is submitted that the Bank had issued a circular dated 28/06/2003 (exhibit 35/C), which, apart from modifying the rate of interest to the various categories of the loans, had stipulated that the interest shall henceforth be capitalised monthly instead of quarterly rests, in respect of an loan, including loan against

deposits. It is submitted that although the first part of the circular revising the rate of interest was made applicable prospectively to the loans to be released with effect from 01/07/2013, the foot note to the said circular applied to all loans, including the loan in question. It is submitted that thus, the learned Magistrate was in error in holding that the interest charged by the applicant was not in consonance with the terms agreed. It is submitted that the first respondent has neither cross-examined the sole witness of the applicant on the circular or the statement of accounts produced. The learned Counsel has pointed out certain entries in which the interest is debited to the account for the period from 30/06/2003 to 30/09/2003, in order to submit that the applicant Bank having debited interest at the revised rates, there was no objection raised by the first respondent and on the contrary, the first respondent has made certain repayment thereafter. It is, therefore, submitted that the respondent was well aware of the change of mode in which the interest was to be applied, namely from quarterly rests to monthly rests.

7. It is also submitted that the learned Magistrate could not have placed reliance on the decision of this Court in Criminal Miscellaneous Application No. 7/2010 in Stamp Number Main No. 34/2010 dated 02/03/2010 between the same parties, by which, a

similar challenge to a judgment of acquittal in respect of another cheque issued by the first respondent, has been negatived. It is submitted that in that case, the circular was not produced at the stage of evidence. It is submitted that in the present case, the circular was produced in evidence and was also read in evidence and in the absence of any material cross-examination of the witness, the learned Magistrate could not have held that the application of the interest was not proper. He, therefore, submitted that the impugned judgment needs interference.

8. On the contrary, it is submitted by Shri Naik, the learned Counsel for the first respondent that the circular shows that it is applicable to the loans to be released with effect from 01/07/2003. It is submitted that the same could not have been applied to the loan in question, which was admittedly sanctioned and disbursed prior thereto. The learned Counsel has placed reliance on the decision of this Court in Criminal Miscellaneous Application No. 7/2010, in order to submit that a similar challenge raised on behalf of the applicant has already been negatived. The learned Counsel has also placed reliance on the decision of this Court in ***Vividha Urban Co-operative Credit Society Vs. Gurudas Krishna Fatrekar and others*** reported in 2010 (2) Goa L. R. 1, in order to submit that in a similar facts situation, this

Court had upheld the order of acquittal. It is submitted that this Court has held that the calculation of the interest on monthly rests could not have been done.

9. In reply, the learned Counsel for the applicant has submitted that the said case is distinguishable inasmuch as in that case, the prosecution witness had admitted that there was no intimation about the change of interest to the accused and further there was no condition that the accused was liable to pay interest at rates, which may be revised from time to time.

10. On hearing the learned Counsel for the parties and on perusal of the record, I find that no case for grant of leave is made out. It is undisputed that as per the terms of the agreement, interest was payable at the rate of 18.5 % on quarterly rests. Indeed, it is not in dispute that there was a term authorising the applicant to modify the rate of interest. Clause 16 of the Rules concerning grant of credit facilities reads as under :

> *"The board/ committee reserves the right to change any of the conditions or to introduce additional conditions at any time and to change rate of interest."*

11. The question is whether there was such a change

effected in the present case. On behalf of the applicant, reliance is placed on the circular exhibit 35/C which reads as under :

"CIRCULAR

Sub:- Revised rate of interest on Loan & Advances.

All the Managers of concerned Branches and Head office of the Society are hereby informed that, the Board of Directors in its meeting held on 22nd June 2003 has decided to revise the rate of interest on loans and advances as under.

	Purpose	*Rate of Int.*
1.	*Personal loans/ Marriage/ House repair Purchase of Furniture / Purchase of old Vehicle/ Gold Loans.*	*16%*
2.	*Business / Purchase of Flat/ Cash Credit*	*14%*
3.	*Construction of New house / Purchase of New Vehicle / Medical / Higher Studies/ Education/ Agriculture*	*13%*

The above revised rates will be applicable only to the new loans to be released w.e.f. 01st July 2003.

sd/-

General Manager

Note :- The interest to be capitalised monthly instead of quarterly to all loans including loan on deposits."

12. It would appear that the rate of interest for the category, namely purchase of new vehicle (as in the present case) was reduced to 13 %. The circular stipulated that the revised rates would be applicable only to the new loans to be released with effect from 01/07/2003, but the foot note appended shows that the interest to be capitalised monthly instead of quarterly to all loans, including loans on deposits. The learned Counsel for the applicant submitted that the interest was to be capitalised on monthly rests instead of quarterly rests on all loans. There was an attempt on behalf of the applicant to submit that the interest rates were revised on a directive from the Reserve Bank of India.

It is trite that the interest rates charged by the Banks and Financial Institutions are market sensitive and are susceptible to change from time to time, having regard to the overall financial scenario. It would appear that at the relevant time, when the circular was issued, the interest rate had a declining trend inasmuch as the rates for the loan, pertaining to purchase of new vehicles, was modified to 13 %. This revision of rate was made applicable prospectively and could not have applied to the loan in question. The moot question is whether the mode, in which the interest is applied, which is governed by the note, would be applicable to such prior loans. If the submission on behalf of the appellant is accepted, it would lead to absurd result viz in the regime of declining interest rates, the respondent would be further burdened by application of interest on monthly rests. The circular cannot be interpreted in a manner which would lead to diagonally opposite results in respect of loans released before and after 01/07/2003. Such a situation, in my considered view, cannot be countenanced.

13. Apart from this, it appears that there was a previous complaint filed by the applicant against the the respondent in respect of dishonour of an earlier cheque, in which there was an order of acquittal passed in favour of the respondent. That was challenged by the applicant in Criminal Miscellaneous Application No.7/2010, which was dismissed by this Court on 02/03/2010. This Court had, inter alia, held that the circular makes it ex-facie clear that the same will be only applicable to new loans to be released with effect from 01/07/2003. Thus, in my considered view, no exception can be taken to the findings as recorded by the learned Magistrate. Apart from this reason, the learned Magistrate has also considered the absence of production of any deposit slips, in order to prove that the said cheque was in fact deposited by the the first respondent. In such circumstances, the

defence raised on behalf of the respondent is probablised. In the result, there is no case made out for interference with the judgment of acquittal.

14. In such circumstances, the application is dismissed.

C. V. BHADANG, J.

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