

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 33 OF 2015

IN

STAMP NUMBER MAIN NO. 2818 OF 2014

MRS. UJWALA UTTAM GAONKAR.

... Applicant

Versus

SHRI SURESH VINAYAK AZGAONKAR @
SURESH MORAJKAR.

... Respondent

Mr. Vivek Angelo Rodrigues, Advocate for the applicant.
Mr. P. P. Singh, Advocate for the respondent.

Coram:- C. V. BHADANG, J.

Date:- 30th March, 2015

P.C. Heard Shri Kakodkar, learned Counsel for the applicant and
Shri Singh, learned Counsel for the respondent.

2. This is an application for leave to appeal against acquittal.
The applicant had filed a complaint under Section 138 of the
Negotiable Instruments Act, 1881 (the Act, for short) against the
respondent for the offence punishable under Section 138 of the Act.
By a judgment and order dated 14/08/2014, the respondent came to
be acquitted.

3. According to the applicant, she was acquainted with one
Nirupa Velip, who had persuaded the applicant to invest an amount
of Rs.60,000/- with the respondent representing that the respondent is
the principal trustee of Azgaonkar Service Trust. It was also stated
that the applicant would be provided service and in the meantime, till
the job is provided, she would receive a commission and her amount

deposited, would be refunded within a period of three years or at the time of leaving of the job at normal bank interest rate.

4. With the assistance of the learned Counsel for the parties, I have perused the impugned judgment. It appears that the respondent had put up a defence that the cheque was stolen in an incident, in which the mob had attacked his office. The learned Counsel for the applicant has submitted that there is no such defence set up in the notice reply and further the officer is not called in defence to show that the signature is forged. Prima facie, it appears that the learned Magistrate has held that the presumptions available under Sections 118 and 139 of the Act stood rebutted on the ground that the applicant had admitted that she was not aware whether accused was present when Nirupa represented and approached her.

5. Having regard to the rival circumstances and the submissions made, I find that a case for grant of leave is made out. As such, the application is allowed in terms of prayer clause (a).

6. Action under Section 390 of Cr.P.C. to be taken by the learned Magistrate, Quepem.

C. V. BHADANG, J.

SMA