IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 215 OF 2014

THE QUEPEM URBAN CO-OP. CREDIT SOCIETY LTD., ... Applicant

Versus

SHRI. ANTHONY JOHN PEREIRA ... Respondent

Mr. Abhay Nachinolkar, Advocate for the Applicant.
Mr. C. A. Ferreira with Ms. R. Almeida, Advocates for Respondent.

Coram:- C. V. BHADANG, J.

Date:- 29th June, 2015

P.C.:

By this application, the applicant/original complainant is seeking leave to appeal against acquittal.

2. The applicant is an Urban Credit Co operative Society. The respondent had obtained a loan of Rs.7,50,000/- from the applicant on 25/5/2006 for purchase of vehicles, which were hypotheticed in favour of the applicant. According to the applicant, the subject cheque was issued by the respondent on 4/3/2008 towards repayment of the outstanding amount of Rs.6,22,040/-. As the cheque got dishounoured the applicant after issuance of the statutory notice filed complaint under section 138 of the Negotiable Instruments Act. On behalf of the applicant, one Shri Surendra Mahadev Gaonkar, who was working as Legal and Recovery officer was examined. During the cross examination the said witness admitted that the respondent

has made repayment of Rs.3,80,000/-.

3. The defence raised by the respondent is that the applicant had obtained blanks cheques by way of security and the amount as shown in the said cheque was not outstanding. The learned Magistrate has found that the applicant has failed to establish that the amount of Rs.6,22,040/- was due and outstanding on 4/3/2008 i.e. the date on which the cheque is issued and in that view of the matter proceeded to acquit the respondent.

4. It is submitted on behalf of the applicant that the advance of loan as also the signature on the cheque is admitted and as such a presumption arose in favour of the applicant under section 118 r/w section 139 of the N. I. Act and that is not rebutted. The learned counsel has taken me through the cross examination of the witness Surendra Gaonkar in order to show that there is nothing in the cross examination to show that the statutory presumption stands rebutted. He, therefore, submitted that the finding of acquittal cannot be sustained.

5. On the contrary, it is submitted on behalf of the respondent that the applicant has not produced statement of account in respect of the loan account in order to show that the amount as shown in the subject cheque was outstanding on 4/3/2008. It is submitted that the

Magistrate has rightly found that the applicant has failed to establish its case.

6. On hearing the learned counsel for the parties and on perusal of the impugned judgment, I find that no case for grant of leave is made out.

7. Admittedly, the applicant is a Credit Co operative Society and is expected to maintain proper accounts in respect of the loan transactions. The best possible evidence to show that the amount as shown in the subject cheque was outstanding on 4/3/2008 was to produce the relevant extract of the Ledge account in respect of the loan. That has not been done for the reasons best known to the applicant. Shri Gaonkar has admitted in his cross examination that the respondent has repaid an amount of Rs.3,80,000/- towards the loan. If that be so, it is not possible to accept that an amount in excess of Rs.6,00,000/- would be repayable in the year 2008 i.e. within a period of two years from the grant of the loan. It is trite that the scope of the examination, in an appeal of the present nature is limited. Even where two views are equally possible the appellate Court cannot substitute its view on the ground that it is more plausible. It is only when the view taken by the trial Court is perverse or is an impossible view that the appellate Court can interfere.

8. On consideration of the overall circumstances, I find that the

view taken by the learned Magistrate is a plausible view. Thus, no case is made out for grant of leave. The application accordingly stands dismissed.

C. V. BHADANG, J.

ap/-