

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NOS.279 and 280 of
2015 and 74, 75, 85, 98 AND 126 OF 2016

CRIMINAL MISCELLANEOUS APPLICATION NOS.279 and 280 of
2015 and 98 OF 2016

SANJIVANI SAHAKARI SAKHAR
KARKHANA LTD.,
A Co-operative Society
registered under the Maharashtra
Co-op. Societies Act, 1960,
then applicable to the Goa,
having its registered office
at Dayanandnagar, presently
within the limits of Dharbandora
Taluka of Goa, duly represented
by its Managing Director
Shri Pradeep Shankar Naik,
major of age, son of Shankar
Naik, resident of : H.No./240,
Naik Wado, Thane, Village
Dongurli, Sattari, Goa .. Applicant

Versus

1. Mrs. Maya Maruti Naik
w/o Mr. Maruti Krishna Naik,
major in age,
resident of Opposite Nestle
India Ltd., Tisk, Usgaon- Goa.
2. State
Through Public Prosecutor
In the High Court of Bombay
at Goa. .. Respondents

AND

CRIMINAL MISCELLANEOUS APPLICATION NOS.74, 75, 85 AND
126 OF 2016

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A Co-operative Society
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Naik, resident of : H.No./240,
Naik Wado, Thane, Village
Dongurli, Sattari, Goa .. Applicant

Versus

1. Mr. Maruti Krishna Naik,
s/o Mr. Krishna Naik,
major in age,
resident of Opposite Nestle
India Ltd., Tisk, Usgaon- Goa.
2. State
Through Public Prosecutor
In the High Court of Bombay
at Goa. .. Respondents

Mr. A. D. Bhobe and Ms. S. Bhobe, Advocates for the
applicant in all the applications.

Mr. H. D. Naik, Advocate for the respondent no.1 in
all the applications.

CORAM :- C. V. BHADANG, J.

Date : 24th August, 2016.

ORAL ORDER :

Heard the learned Counsel for the applicant and the learned Counsel for the respondent no.1.

2. All these applications are for leave to appeal against acquittal. They are between same parties and involve common questions.

3. The applicant is a Co-operative Sugar Factory, which is running a Petroleum outlet. It was contended in the complaint that the respondent no.1 was a handling Agent of one Prasanna Ghotge, a Transport Contractor of Vedant Sesa Goa Ltd. The applicant used to supply diesel to the Trucks engaged by Mr. Prasanna and towards such sale of diesel, it was the respondent no.1, who was making payment by cheque. The subject cheques got dishonoured, which led the applicant to file separate complaints under Section 138 of the Negotiable Instruments Act (the Act, for short).

4. The learned Magistrate has found that there was no material to show that the respondent no.1 was handling agent of Prasanna Ghotge and admittedly, diesel was supplied to the Trucks hired by Mr. Prassan Ghotge. In that view of the matter, the learned Magistrate held that the applicant failed to prove that the subject cheques were issued towards discharge of a legally enforceable debt or liability.

5. On behalf of the applicant, reliance is placed on the decision of the Supreme Court in the case of ICDS Ltd Vs. Beena Shabeer and Another; (2002)6 SCC 426 and Mainuddin Abdul Sattar Shaikh Vs. Vijay D. Salvi; (2015)9 SCC 622. It is contended that the fact that the respondent no.1 is a drawer of the cheque and once signature on it is not disputed, a presumption arises in favour of the applicant, which has not been rebutted. It is submitted that the respondent no.1 also failed to issue a reply to the notice. The learned Counsel submits that the defence set up that the subject cheque was issued to Prasanna

Ghotge towards supply of iron ore, cannot be accepted as being improbable.

6. On the contrary, the learned Counsel for the respondent no.1 states that the decision in the case of ICDS Ltd. and Mainuddin Shaikh (supra) are distinguishable. The learned Counsel points out that although the witness for the applicant admitted that there was a document showing that the respondent no.1 was acting as handling agent of Prasanna Ghotge, the same is not produced on record.

7. I have considered the circumstances and the submissions made.

8. There are in all seven cheques, which got dishonoured, which led to filing of seven separate complaints under Section 138 of the Act.

9. In the case of Mainuddin Shaikh (supra), the Supreme Court has, inter alia, held that from bare reading of Section 138 of the Act, essentials for

attracting the liability are that a person, who is made liable should be drawer of the cheque and should have drawn the cheque on the account maintained by him with the banker, for payment of any amount of money to any person from out of that account, for discharge in whole or part of any debt or other liability. In the context of the said Section, it has been held that a person, who draws a cheque on an account maintained by him for paying to payee, alone attracts the liability.

10. Considering the overall circumstances, I find that an arguable case arises. In such circumstances, the applications are allowed, granting leave to the applicant to appeal against acquittal. Office to register the appeals and the same shall be treated as admitted. The learned Magistrate to take action under Section 390 of Cr.P.C.

C. V. BHADANG, J.

SMA