

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO. 50 OF 2016

Shri Subash Gunaji Gadekar,
of major age, Indian National,
occupation business, resident
of house No.201, Thorlebag,
Keri, Pernem-Goa, represented
herein through his next best
friend and brother,
Shri Vithal Gunaji Gadekar,
of major age, Indian National,
resident of House No.201,
Thorlebag, Keri, Pernem-Goa.
(Registered Address)

..... Petitioner

V e r s u s

1) The Vividha Urban
Cooperative Credit
Society Limited, having
its Head Office at
Navelim, Bicholim-Goa
and registered under
No.113/98-99, having
its Branch at Mapusa,
Goa, represented herein
by its Officer/Clerk,
Shri Balwantrao
Jaiwantrao Dessai, of
major age, Indian
National, resident of
House No.79, Maulantad,
Sanquelim-Goa.

- 2) S T A T E, through Public
Prosecutor, High Court of
Bombay, Goa, at Panaji-Goa.
(Registered Addresses) Respondents

Ms. Agnetha C. Lobo, Advocate for the Petitioner.

Shri A. D. Bhobe, Advocate for the Respondent no.1.

CORAM: C. V. BHADANG, J.
DATE: 15th September, 2016.

ORAL JUDGMENT:

Rule made returnable forthwith. The learned counsel for the respondent waives service.

2. The petitioner has been convicted for the offence punishable under section 138 of the Negotiable Instruments Act, 1881 and has been sentenced to suffer simple imprisonment for a period of six months and to pay fine of Rs.6.00 lakhs and in default to undergo simple imprisonment for two months. This has been confirmed initially by the learned Assistant Sessions Judge in appeal and thereafter by the Additional Sessions Judge in Criminal Revision application.

3. During the course of the pendency of this petition the parties have amicably settled the dispute and have filed an application for compounding. As per the order dated 1/9/2016, the petitioner has deposited an amount of Rs.84,000/- (Rupees eighty four thousand only) with the Goa State Legal Services Authority in compliance with the decision of the Hon'ble Supreme Court in the case of **DAMODAR S. PRABHU VS. SAYED BABALAL H, (2010) 5 SCC 663**. In such circumstances, the following order is passed:

Order:

- (i) The petition is allowed.
- (ii) The impugned judgment of conviction and sentence is hereby set aside.
- (iii) The petitioner is acquitted of the offence punishable under section 138 of the N.I. Act.

(iv) The Bail Bonds of the petitioner stand cancelled.

(v) The amount of Rs. 3.00 lakhs deposited before this Court shall be paid to the respondent no.1 along with interest, if any.

(vi) The learned Asst. Sessions Judge shall release the amount of Rs.3.00 lakhs deposited before the said court, which shall be paid to the respondent no.1 along with interest, if any.

4. Rule is made absolute in the aforesaid terms.

C. V. BHADANG, J.

Ap/