IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 100 OF 2016
IN
STAMP NUMBER MAIN NO. 1270 OF 2016

THE BICHOLIM URBAN CO-OPERATIVE BANK LTD., PONDA BRANCH, REP. BY SHRI. SAGUN NARSHIV SHETYE. ... Applicant

Versus

SHRI. SURYAKANT MAHADEV NAIK AND ANR. ... Respondent

Mr. R.G. Ramani, Advocate for the Applicant.
Respondent No. 1 is present in person.

Coram:- C. V. BHADANG, J.

Date:- 11th July, 2016

P.C:

Heard Mr. Ramani, the learned Counsel for the applicant and the respondent no. 1 in person.

2. It is submitted on behalf of the applicant that the learned Magistrate was in error in holding that the subject cheque is not issued towards discharge of a legally enforceable debt or liability. The learned Counsel has pointed out clause-4 of the loan agreement, under which the applicant has a right to recall the entire loan amount, in the event if, there is a default of even of a single installment. The learned Counsel submits that under the said agreement, a separate notice recalling the loan is not contemplated. The learned Counsel submits that reliance placed by the learned Magistrate on the decision

of this Court in the case of STATE OF MAHARASHTRA Vs. KALPAK BHASKAR GADHAVE, 2009 (1) BOM. C.R.(CRI) 184, is misplaced as the facts in the said case are clearly distinguishable, which is evident from paragraph 4 of the said judgment. The learned Counsel also pointed out that there was no reply sent to the notice issued to respondent no. 1.

3. The respondent no. 1, who appears in person has produced a copy of the letter dated 21.01.2016 addressed to the applicant, which is taken on record and marked 'X' for identification. In the said letter, he has requested for the loan account to be regularised. He submits that an amount of Rs.20,000/- is deposited as stated in the said letter prior to 30.01.2016 and from February, 2016 onwards, he is regularly paying the monthly installments.

4. The learned Counsel for the applicant states that the applicant shall consider this letter and in the event the applicant is inclined to regularise the loan, the same shall be brought to the notice of this Court.

5. Having heard the learned Counsel for the applicant and the respondent no. 1 in person, I find that a case for grant of leave is made out. The application is accordingly allowed, granting leave to the applicant, to appeal against acquittal. The office shall register the appeal and the same shall be treated as admitted.

The learned Magistrate shall take action, under Section 390 of Cr.P.C.

It will be open to the applicant to consider the request of the respondent no. 1 for regularisation of the loan, independently and the parties shall bring to the notice of this Court any subsequent developments in the matter.

C. V. BHADANG, J.

EV