IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 256 OF 2015
IN
STAMP NUMBER MAIN NO. 2825 OF 2015

THE VIVIDHA URBAN CO-OPERATIVE
CREDIT SOCIETY LIMITED,THR.BRANCH
MANAGER MRS.RESHMA SAKHALKAR. ... Applicant
Versus
MR.SADIQ @ SADIQUE MOHAMMAD
SHAIK., ... Respondent

Mr. Anthony Joe D'silva, Advocate for the applicant.

Mr. Sandesh D. Padiyar, Advocate for the respondent.

Coram:- C. V. BHADANG, J.

Date:- 26th July, 2016

P.C.

Heard the learned Counsel for the applicant and the 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). By the impugned judgment, the respondent has been acquitted on the ground that the subject cheque cannot be said to have been issued in discharge of a legally enforceable debt or liability. The learned Magistrate has found that as per the terms and conditions of the loan, the interest was chargeable at quarterly rest. However, PW1 had admitted that

interest was charged at monthly rest. The learned Magistrate has found that although PW1 made a reference to clause 8 of the terms and conditions and a resolution passed by the Board of Directors, it appears from the reading of the impugned judgment that the same were not produced. However, the learned Counsel for the applicant has referred to a circular dated 28/06/2003 in which, apart from modification in the rate of interest, there is a note appended, which says that interest shall be capitalized monthly instead of quarterly basis.

3. The learned Counsel for the applicant states that this circular was produced before the learned Magistrate. The learned Counsel for the respondent disputes this. The learned Counsel for the respondent placed reliance on the decision of this Court in VIVIDHA URBAN CO-OPERATIVE CREDIT SOCIETY LTD. VS. GURUDAS KRISHNA FATREKAR (Criminal Appeal No.20/2010, dated 22/03/2010), in which, in similar circumstances, this Court had confirmed the judgment of acquittal.

4. Prima facie, a perusal of the said judgment shows that this Court had found that except clause No.5, there was no other clause, which was brought to the notice, in which the borrower had agreed to abide by any change regarding the terms and conditions.

5. Be that as it may, having regard to rival submissions made, I

find that a case for grant of leave is made out. The application is, accordingly, allowed. Office to register the appeal, which shall be treated as admitted. The learned Magistrate to take action under Section 390 of Cr.P.C.

C. V. BHADANG, J.

SMA