

**IN THE HIGH COURT OF BOMBAY AT GOA**

**CRIMINAL MISC. APPLICATION NO. 59 OF 2016**

**IN**

**STAMP NUMBER MAIN NO. 3495 OF 2015**

VPK URBAN CO-OPERATIVE CREDIT  
SOCIETY LIMITED, REP. BY ITS LEGAL  
OFFICER MISS. RATNA S.S. AMONKAR.

... Applicant

Versus

SHRI ROHIT LAXMAN SAWANT AND ANR.,

... Respondents

Adv. Devidas J. Pangam for the Applicant.

Adv. Jagannath Jayant Mulgaonkar for Respondent no.1

Coram:- C. V. BHADANG, J.

Date:- 14th July, 2016

P.C.:

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

2. The applicant had filed a complaint under section 138 of the Negotiable Instruments Act against respondent no.1. The learned Magistrate by the impugned judgment had framed as many as five points, all of which are answered in the negative. However, a perusal of the judgment shows that in fact, the only ground on which the respondent no.1 is acquitted is that according to the learned Trial Court, the applicant had failed to prove that the subject cheque, Exh.

31 was issued towards discharge of a legally enforceable debt or liability. In so far as the points no. 2 to 5 are concerned, it has been found that once the point no.1 is answered in the negative, even if the other ingredients are satisfied, "it is of no use as in order to prove the offence under section 138 of the N.I. Act, the complainant has to establish all the ingredients." Thus, prima facie it appears that the points no.2 to 5 could not have been answered in the negative. In so far as the finding against point no.1 is concerned, the learned Magistrate has found that the applicant which is a Credit Co operative Society in view of its bye laws could operate and conduct business for the villages and Gram Panchayat areas of Velim, Priol and Cuncolim, while the subject loan is granted by its branch at Ponda, which is beyond jurisdiction. The learned counsel for the applicant submits that the applicant has established its branch offices at Ponda and other places after approval of the statutory authority under the Cooperative Societies Act and the area of operation is extended and is not limited to the three villages, as aforesaid. The learned counsel for the respondent no.1 states that the certificate under section 65 B of the Evidence Act does not conform to the legal provisions.

3. Having regard to the circumstances as mentioned above, the application is allowed granting leave to the applicant to file an appeal against acquittal. The office shall register the appeal and the same shall be treated as admitted. The learned Magistrate to take action

under section 390 Cr.P.C. The rival contentions are left open to be gone into at the hearing of the appeal.

C. V. BHADANG, J.

ap/-