

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 4 OF 2017

THE BHANDARI CO-OPERATIVE CREDIT
SOCIETY LTD. REP. HEREIN BY ITS
AUT. REP. SHRI JAIDEV S.
MANDREKAR.

... Appellant

Versus
SHRI. RAGHAVENDRA D. TELANG AND
ANR.,

... Respondents

Mr. Devidas J. Pangam with Mr. Luis Fernandes, Advocates for
the Appellant.

Coram:- C. V. BHADANG, J.

Date:- 16th March, 2017

ORAL ORDER:

On 13.01.2017, a notice of final disposal was issued in this case. The respondent no.1/accused is absent, though served. I have heard Shri Pangam, the learned Counsel for the appellant and the appeal is being disposed off finally.

2. The appellant filed a complaint under Section 138 of the Negotiable Instruments Act, being Criminal Case No.586/OA/NIA/2011/A, before the learned Judicial Magistrate First Class at Ponda. The complaint was dismissed by the learned Magistrate on 01.02.2016 in the following terms:

"Called out today.

Complainant present alongwith Adv. D.D. Naik.

Accused absent. Record reveals that from 30/11/2015

for last more than 2 months complainant has not taken steps. Hence complaint is dismissed for not taking steps. Proceedings closed."

3. It is submitted by the learned Counsel for the appellant that the respondent no. 1/accused was under exemption and subsequently, remained absent and a non bailable warrant was issued. The appellant had taken steps and a non bailable warrant was issued on 21.08.2015, which was returned unexecuted on 23.10.2015. It is submitted that this is not the case, in which, there was any deliberate act on the part of the appellant or gross negligence in taking steps. It is submitted that the complainant is a Co-operative Credit Society and thus, the matter involves public money.

4. Having heard the learned Counsel for the appellant, I find that in the circumstances of the case, the complaint deserves to be restored to file.

5. In the result, the following order is passed:

O R D E R

(a) The appeal is allowed.

(b) The impugned order is hereby set aside.

(c) Criminal Case No.586/OA/NIA/2011/A, is restored to file of the learned Judicial Magistrate First Class at Ponda, for disposal in accordance with law.

(d) The Authorised Representative of the appellant or it's Counsel to remain present before the learned Magistrate on 03.04.2017 at 10:00 a.m.

C. V. BHADANG, J.

EV