

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 79 OF 2016

IN

STAMP NUMBER MAIN NO. 1365 OF 2016

THE SHIRODA URBAN CO-OP. CREDIT
SOCIETY LTD., REP. HEREIN THR. ITS
BR. MANAGER, SHRI GURUDAS P. NAIK.

... Applicant

Versus

SHRI. GOKULDAS D. NAIK AND ANR.,

... Respondents

Mr. Girish Sardessai, Advocate for the Applicant.

Mr. Ashwin D. Bhobe, Advocate for Respondent No. 1.

Coram:- C. V. BHADANG, J.

Date:- 27th January, 2017

P.C:

Heard Shri Sardessai, the learned Counsel for the applicant and Shri Bhobe, the learned Counsel for respondent no. 1. The respondent no.1 was convicted by the learned Magistrate for the offence punishable under Section 138 of the Negotiable Instruments Act, which has been set aside by the learned Sessions Judge in appeal. Hence, this application for leave to appeal against acquittal.

2. Shri Sardessai, the learned Counsel for the applicant submitted that the Auditor had found that the amount of loan, which was sanctioned was transferred to the savings bank account of the respondent no.1 and there are certain withdrawals.

It is submitted that assuming that there are some irregularities

noticed by the Auditor, would not make the subject cheque being issued in the absence of there being a legally enforceable debt or liability.

3. On the contrary, it is submitted by Shri Bhobe, the learned Counsel for the respondent no.1 that there are several material irregularities noticed by the Auditor and on the basis of the same, the learned Sessions Judge has rightly found that the loan amount was never paid to the respondent no.1. He therefore submits that the view taken by the learned Sessions Judge is a plausible view.

4. I have carefully considered the rival circumstances and the submissions made. Prima Facie at this stage, it appears that the Auditor had found that the amount was disbursed to the savings bank account of respondent no.1, from which there were withdrawals. Considering the overall circumstances, I find that a case for grant of leave is made out.

In the result, the criminal miscellaneous application is allowed. Let the criminal appeal be registered and the same shall be treated as admitted. The learned Magistrate shall take action under Section 390 of Cr.P.C.

C. V. BHADANG, J.

EV