

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPLICATION (MAIN) NO. 120 OF 2017

MR. SHIVA K. GAONKAR

... Applicant

Versus

**THE SATTARI URBAN CO-OP CREDIT
SOCIETY LTD., DULY REP. BY ITS
BRANCH MANAGER AND ANR.,**

... Respondents

Mr. Deepak Gaonkar, Advocate for the applicant.

Coram:- C. V. BHADANG, J.

Date:- 12th September 2017

ORAL ORDER :

On 02/05/2017, while issuing notice in Criminal Application No.121/2017, it was stipulated that the petition will be disposed of at the stage of admission. The respondent no.1 (complainant) is served, however, has not put in appearance.

2. I have heard the learned Counsel for the petitioner and the Criminal Application is being disposed of finally.

3. In a complaint filed by the respondent no.1 under Section 138 of the Negotiable Instruments Act, the applicant was convicted and was sentenced to undergo Simple Imprisonment for a period of two months and to pay a compensation of Rs.90,485/- and in default, to undergo Simple Imprisonment for

nine months. The petitioner challenged the same in Criminal Appeal No.89/2016 before the learned Additional Sessions Judge at Mapusa. The learned Additional Sessions Judge, by an order dated 13/12/2016, has dismissed the appeal for non-prosecution, which order is subject matter of challenge in this petition.

4. Indisputably, the petitioner has deposited the entire amount of compensation before the learned Sessions Judge on 08/05/2017. Criminal Appeal has to be decided on merits and cannot be dismissed in default. Even otherwise, considering the overall circumstances, it would be appropriate if the Criminal Appeal is restored and is decided on merits.

5. In such circumstances, the Criminal Application is allowed. The impugned order is hereby set aside. Criminal Appeal No.89/2016 is restored back to the file of the learned Sessions Judge, for disposal according to law. The order of suspension of sentence also stands restored.

6. Parties to appear before the learned Sessions Judge on 25/09/2017 at 10.00 a.m.

C. V. BHADANG, J.

SMA