IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 115 OF 2017
IN
STAMP NUMBER MAIN NO. 292 OF 2017

VPK URBAN CO-OP. CREDIT SOCIETY LTD., REP. HEREIN BY ITS AUT. OFFICER, PUNDALIK RAMA PALYEKAR., ... Applicant

Versus

PRITAM DATTA NAIK AND ANR., ... Respondents

Shri Devidas J. Pangam, Advocate for the applicant.

Shri I. Agha, Advocate for the respondent no.1.

Coram:- C. V. BHADANG, J.

Date:- 20th March 2018

P.C.

Heard Shri Pangam, the learned Counsel for the applicant and Shri Agha, the learned Counsel for the respondent no.1.

2. This is an application for leave to appeal against acquittal. The learned Magistrate had acquitted the respondent no.1 of the offence punishable under Section 138 of the Negotiable Instruments Act (the Act, for short), inter alia, on the ground that the applicant, which is a Credit Co-operative Society has not obtained licence from the Reserve Bank of India, for carrying on banking business. The learned Magistrate, while holding so, has

relied upon the provisions of Section 22 and Section 56(a)(ccii) of the Banking Regulation Act. It has also been held that the applicant has failed to establish that the respondent no.1 is the shareholder of the applicant Credit Co-operative Society. In that view of the matter, the learned Magistrate has held that the applicant had failed to prove that the subject cheque was issued towards discharge of legally enforceable debt.

3. Shri Pangam, the learned Counsel for the applicant has pointed out that Section 56 of the Banking Regulation Act applies to the Co-operative Banks and not to Credit Co-operative Societies. It is submitted that the learned Magistrate has failed to properly appreciate the provisions of Section 56 and has erroneously held that licence from the RBI is necessary. It is submitted that there was no reply issued to the statutory notice and at no point of time, any defence was taken that the respondent no.1 is not the shareholder of the applicant/ Society.

4. Shri Agha, the learned Counsel for the respondent no.1 submits that in the absence of a licence to carry on banking business from the RBI, the advancement of loan itself would be illegal and thus, the learned Magistrate has rightly held that there was no legally enforceable debt towards the discharge of which, the subject cheque could have been issued.

5. On hearing the learned Counsel for the parties and on perusal of the record, I find that the matter requires consideration and a case for grant of leave is made out.

6. The application is, accordingly, allowed. Let Criminal Appeal be registered, which shall be treated as admitted.

7. Shri Agha, the learned Counsel waives notice for the respondent no.1.

8. The learned Magistrate to take action under Section 390 of Cr.P.C.

C. V. BHADANG, J.

SMA