

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL MISC. APPLICATION NO. 147 OF 2016
IN
STAMP NUMBER MAIN NO. 1708 OF 2016

THE BHATAGRAM URBAN CO-OP. CREDIT,
SOCIETY LTD., REP. BY ITS C.E.O.
SANJAY GAJANAN PARMEKAR.

... Applicant

Versus

MAHADEV CHANDRAKANT KAMAT AND ANR. Respondent

Shri Deepak Gaonkar, Advocate for the applicant.

Shri A. D. Bhobe, Advocate for the respondent no.1.

Coram:- C. V. BHADANG, J.

Date:- 26th February 2018

P.C.

This is an application for leave to appeal against acquittal.

2. One of the grounds on which the respondent no.1 has been acquitted is that there was no prior demand made to the respondent no.1 of the outstanding amount. The learned Magistrate, placing reliance on the decision of this Court in KARTIK SHARMA AND ANOTHER VS. HDFC BANK LTD. AND ANOTHER; 2010 ALL MR (Cri) 192, has held that where the person issuing a cheque is a guarantor and when his liability is payable on demand, a prior demand in writing is necessary.

3. The learned Counsel for the applicant points out that as per the terms and conditions of the loan, there was no similar condition for issuing a prior demand notice. In the submission of the learned Counsel for the applicant, the case of KARTIK SHARMA (Supra), is distinguishable on facts.

4. Having heard the learned Counsel for the parties, I find that a case for grant of leave is made out. The application is, thus, allowed. Let the Criminal Appeal be registered, which shall be treated as admitted.

5. The learned Counsel for the respondent no.1 waives notice of admission.

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

C. V. BHADANG, J.

SMA