

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL MISC. APPLICATION NO.191 OF 2017

VPK Urban Co-op. Credit Society Ltd. ... Applicants

Versus

Mr. Sudin Dattaram Navelkar & Anr. ... Respondents

Shri D. Pangam, Advocate for the Applicant.
Shri P. Talaulikar, Advocate for the Respondent No.1.

Coram : NUTAN D. SARDESSAI, J.

Date : 12th June, 2018

ORAL ORDER :

Heard Shri D. Pangam, learned Advocate for the applicants and Shri P. Talaulikar, learned Advocate for the respondent no.1.

2. Shri D. Pangam, learned advocate for the applicants invited attention to the impugned judgment pursuant to which the learned JMFC had not considered the transaction entered into by the respondent with the applicants and that the cheque had been issued in discharge of its liability. There was also no particular dispute of the cheque in question being issued by the respondent as on 28/12/2012 in the amount of ₹7,84,500/-. The learned JMFC had held against the

applicants that the expenses incurred by it towards the postal charges and the issuance of notice and miscellaneous expenses could not be charged to the loan account of the respondent and used it as one of the grounds to acquit the respondent. The learned JMFC had clearly lost sight that even if this charges had to be deducted from the amount of loan, still the liability of the amount towards the applicant was more than the amount of the cheque issued by him i.e. ₹7,84,500/-. The other ground on which the learned JMFC acquitted the accused was that he was not a member of the applicant society and on that ground alone the prosecution did not lie against him. The other ground on which the learned JMFC acquitted the respondent was that the cheque in question was not an MICR cheque and that it was unbelievable that the respondent could have issued a cheque bearing no.352338 in sequence after a lapse of about 3 years from the issuance of an earlier cheque in another transaction between the applicants and the respondent. The applicants had a good case to succeed on merits and therefore the acquittal was erroneous and the applicants had to be afforded an opportunity to file an appeal and leave to appeal had to be granted to the applicants.

3. Shri P. Talaulikar, learned Advocate for the respondent no.1 invited attention to the defences urged by him as recorded by the learned JMFC in the impugned judgment and submitted that no case had been made out by the applicants for leave to appeal against the judgment of acquittal. The learned JMFC had duly considered the contentions on behalf of the applicants and the respondent and passed the judgment of acquittal for which no leave could be granted to file an appeal to the applicants. It was also his contention that there was suppression of material facts by the applicants and on that count alone, the learned JMFC was justified in acquitting the respondent and no leave could be granted to appeal against such an acquittal. He placed reliance in **Seraphin V/s. Lucy Alphones & Anr. [2017 SCC Online Ker 13798]** to substantiate his case on the plea of suppression.

4. i have considered their submissions and also the judgment relied upon which no doubt makes observations that suppression of material facts relating to a transaction would be a ground to non-suit a party and that suppression of the particulars in the complaint alone is sufficient to order his acquittal. This judgment with respect is not binding on this

Court and hence the departure. The applicants have otherwise shown from the material on record adverted to by Shri Pangam, learned Advocate on their behalf that the respondent was its member to whom the loan was sanctioned and that on account of the default in payment of the loan amount, the amounts were escalated and that he was due an amount of ₹8,64,544/- as on 21/11/2012 even considering the fact that miscellaneous expenses which were shown to the account of the respondent were excluded. The cheque issued by the respondent in the amount of ₹7,84,500/- was still in excess of that due to the applicants. To my mind the applicants have a good case to succeed on merits considering that the learned JMFC had proceeded on technicalities and not the substance on merits in the matter. In view thereof the application is allowed. Leave granted to file an appeal. The Registry to register the appeal. The application stands disposed off accordingly.

NUTAN D. SARDESSAI, J.

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