

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 16 OF 2014

THE VASO URBAN COOPERATIVE CR.
STY. LTD. THROUGH ITS AUTHO. REP.
SANJAY NAGVENKAR

... Appellant

Versus

MANGUESH NADKARNI

... Respondent

Shri Prasheen Lotlikar, Advocate for the appellants.

Coram:- NUTAN D. SARDESSAI, J.

Date:- 13th August 2018

ORAL ORDER:

Heard Shri Prasheen Lotlikar, learned Advocate for the appellants who submitted that the learned Trial Court had held in his favour on the vital aspect of the loan being availed off by the respondent-accused, that it was a legally enforceable debt and that the accused-respondent failed to rebut the presumption under Sections 118(a) and 139 of the Act. The learned Trial Court however only on the point of want of authorization being produced on record had dismissed the complaint and acquitted the accused of the charge against him. He place reliance in M.M.T.C. Ltd and another v/s. Medchl chemicals and Pharma (P) Ltd. and another [(2002)1 SCC 234] and submitted that this was a fit case to allow the appeal and remand the file to the learned J.M.F.C. for a proper consideration thereof.

2. None appeared for the respondents despite due opportunity time and again.

3. Having heard Shri P. Lotlikar, learned Advocate for the appellants and considering the impugned judgment, it is apparent that once the learned Judge clearly held in the appellant's favour that he had proved that the cheque was issued by the respondents towards a legally enforceable debt and that he had failed to rebut the presumption available under Sections 118(a) and 139 of the Act, the learned J.M.F.C. could not have held against the applicant only on the premise that the certified copy of the Resolution was not produced on record to substantiate the case of the complainant/appellant.

4. i have considered the judgment in M.M.T.C. Ltd.(supra), which clearly holds that even a complaint filed in the name and on behalf of the Company by its employee without necessary authorisation was still maintainable and want of authorisation could be rectified even at a subsequent stage.

5. Shri Lotlikar, learned Advocate for the appellants submits that this issue of want of an authorisation was raised for the first time during the course of arguments and that the learned Judge could have afforded an opportunity to the appellant /

complainant to produce the said authorisation in its certified extract to the Court which it failed to do.

6. i am satisfied that the complainant had otherwise fulfilled all the ingredients of the offence under Section 138 of the Act while the respondent- accused failed to rebut the presumption under Sections 118(a) and 139 of the Act. i therefore deem it appropriate in the circumstances of the case to hold that this is a fit case to quash the judgment under challenge and in view thereof, i pass the following:

ORDER

- 1) The appeal is allowed and the impugned judgment of acquittal dated 29/06/2013 is quashed and set aside. The matter is remanded to the learned J.M.F.C., 'A' Court, Vasco who is directed to permit the appellant/complainant to produce the necessary authorisation on record and lead additional evidence if need be in that regard to substantiate its case.
- 2) The parties are directed to appear before the learned J.M.F.C. on 03/09/2018 at 10.00 hours.
- 3) The appeal accordingly stands disposed off.

NUTAN D. SARDESSAI, J.