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**IN THE HIGH COURT OF BOMBAY AT GOA.
CRIMINAL REVISION APPLICATION NO.38 OF 2015**

M/s. R. M. Associates
Having their office at
No.41, First Floor, Apna
Bazar, Vasco-da-Gama,
Vasco-da-Gama by its
partners

- 1) Mr. M. R. Sawant,
- 2) Mr. Rajan Bakale

Both having their office
at No.41, First Floor Apna Bazar
Vasco-da-Gama

.... Applicants.

Versus

M/s R. P. S. Mineral Trading Company, a
partnership firm, Having their office at
H. No. 12, Gokulwadi, Sanquelim, Goa,
Represented by its partner Mr. Pravin D.
Blaggan R/o. Sanquelim, Goa.

...Respondent.

Mr. S. M. Singbal, Advocate *for the applicants.*
Mr. S. G. Bhobe, Advocate for the respondent.

**CORAM: MANISH PITALE, J.
Date: 25th November, 2021.**

JUDGMENT:

1. By this revision application, the original accused have approached this Court challenging concurrent findings rendered by the two Courts below, holding the applicants guilty of offence under Section 138 of the Negotiable

Instruments Act, 1881. While holding that the applicants were guilty of having committed the offence in connection with two cheques of Rs. 2,00,000/- and Rs.7,00,000/-, the Court of the Judicial Magistrate, First Class, sentenced the partners of the appellant no.1 firm to undergo simple imprisonment for three months and directed them to pay total amount of Rs. 11,16,000/- under Section 357(3) of the Cr.P.C. This Judgment and order of conviction and sentence was confirmed by the Sessions Court by its judgment and order dated 19.3.2015.

2. The case of the respondent (original complainant) was that it being a partnership firm, had entered into a contract with the applicant no.1. The contract pertained to supply of iron ore by the applicant no.1 to the respondent (complainant). In terms of the contract, applicant no. 1 was supposed to supply iron ore of a particular quality, and the rates of payment for such supply of iron ore were fixed in terms of the contract. There was an arbitration clause in the said contract.

3. The respondent asserted that it made payments on different dates by issuing cheques in favour of applicant no.1 towards advance payment for supply of iron ore. Three payments were made by way of cheques and cash amount of Rs. 50,000/- was paid. According to the respondent, total amount of Rs. 12,70,000/- was paid to the applicant no.1 for the supply of iron ore.

4. It was further the case of the respondent that the applicants supplied only 1500 metric tonnes of iron ore and

that too on analysis was found to be of low grade. In these circumstances, when the respondent approached the applicants with the grievance that they had failed to abide by the terms of the contract, the applicants agreed to repay the advance amount paid by the respondent. According to the respondent, an amount of Rs.1,00,000/- was paid by cash by the applicants and thereafter the subject two cheques were issued, one for Rs.2,00,000/- and the other for Rs.7,00,000/- i.e. total of Rs.9,00,000/- towards repayment in the backdrop of failure to supply iron ore in terms of the contract. The respondent claims that these two cheques were towards part liability of the amount which was to be paid to the respondent.

5. There is no dispute about the fact that these two cheques were dishonoured. The steps expected to be taken by the respondent under Section 138 of the aforesaid Act were indeed taken and the complaint was filed before the Magistrate. The applicants denied the case put forth on behalf of the respondent and the matter went to trial. The rival parties examined witnesses in support of their respective stands. It appears that the applicants claimed that after the amount to be repaid was settled at Rs.1,00,000/-, the partners of the respondent were allegedly harassing the partners of the applicants firm and even their families and that in such circumstances, the subject cheques were forcibly got issued from one of the partners of the applicant no.1. It was further claimed that the signatures of the second partner were forged and that therefore, there was no question of the cheques having been issued in respect of a legal debt or liability.

6. The Magistrate took into consideration the oral and documentary evidence led on behalf of the rival parties. It was found that the presumption that arose in terms of Sections 118 and 139 of the aforesaid Act was not rebutted by the applicants on the touchstone of preponderance of probabilities. Accordingly, it was found that the applicants deserved to be convicted for the offence punishable under Section 138 of the aforesaid Act. Hence, they were sentenced in the aforementioned manner.

7. Aggrieved by the said conviction and sentence imposed upon them by the Magistrate, the applicants filed Criminal Appeal before the Court of Additional Sessions Judge. By the impugned judgment and order dated 19.3.2015, the Sessions Court dismissed the appeal and confirmed the judgment and order passed by the Magistrate.

8. The applicants filed the present revision application to challenge the aforesaid concurrent judgments and orders passed by the two courts below. Rule was granted in the present application on 7.9.2015 and today the application has come up for final hearing.

9. Mr. Singbal, learned counsel appearing for the applicants submitted that although written submissions were filed before the Sessions Court during the pendency of the appeal, the opportunity to advance oral arguments was not granted to the applicants. In this context, the learned counsel for the applicants referred to the roznama of the Sessions Court and also an affidavit of one of the partners of the applicant no.1 firm to contend that no opportunity of

advancing oral arguments was given to the applicants, thereby vitiating the impugned judgment and order dated 19.3.2015, passed by the Sessions Court.

10. It was further submitted that the order passed by the Magistrate in the present case suffered from lack of territorial jurisdiction and that therefore, the conviction and the sentence imposed upon the applicants was unsustainable, which the Sessions Court failed to appreciate. It was further stated that the complaint was deliberately filed by the respondent before the Magistrate at Bicholim, while the said Magistrate had no territorial jurisdiction in the matter. This was done only to harass the applicants and to deprive them of a fair opportunity to raise their defence.

11. Thereupon, it was submitted by the learned Counsel appearing for the applicants that oral and documentary evidence on record would show that the presumption that arose against the applicants had been rebutted on the touchstone of preponderance of probabilities, for the reason that there was no material on record to ascertain the exact nature of the legal debt or liability in the context of which the subject cheques were issued. It was submitted that according to the applicants they had supplied 3000 metric tons of iron ore. Even if the case of the respondent was to be accepted, at least 1500 metric tonnes of iron ore was supplied, and even if it was to be conceded that the said iron ore was of lower grade, it was an admitted position that the respondent had not returned the said iron ore. In the absence of anything to show that 1500 metric tonnes of iron ore was returned, it was clear that the respondent was certainly liable to pay some

amount towards such supply of iron ore, even if it was presumed to be of lower grade. In this context, according to the learned counsel for the applicants, the onus was on the respondent to have given a statement of accounts as to what was the amount due for repayment after adjustment of the admitted amount of iron ore as aforesaid. In the absence of any such material brought on record, there was nothing to ascertain that there was any ascertainable form of legal debt or liability, which could be relatable to the subject cheques allegedly issued by the applicants. According to the learned counsel for the applicants, this was a crucial aspect of the matter which the Courts below failed to appreciate. On this basis, it was submitted that the impugned judgments and orders deserved to be set aside. The learned counsel for the applicants placed reliance on judgment of the Hon'ble Supreme Court in the case ***Basalingappa Vs Mudibasappa, 2019(5) SCC 418*** as also the judgment of this Court dated 23.10.2008 passed in case of ***M/s Jinanj Paper Udyog Vs M/s Dinesh Associates in Criminal Appeal No. 391 of 2008***.

12. On the other hand, Mr. S. G. Bhobe, learned counsel appearing for the respondent (original complainant) submitted that since this Court is dealing with a revision application challenging the concurrent findings rendered by the two Courts below, the scope of interference is limited. It was submitted that a perusal of the impugned judgment and order would show that the applicants had failed to make out a case for exercise of revisional jurisdiction in their favour. It was further submitted that on the aspect of lack of opportunity to the applicants to present oral arguments

before the Sessions Court, a perusal of the roznama and the impugned judgment and order of the Sessions Court would show that the Counsel representing the applicants was indeed heard and that there was no scope for the applicants to raise any grievance in that regard. It was submitted that the affidavit filed by one of the partners of applicants no.1 firm disputing the contents of the roznama of the Court and the contents of the impugned judgment and order of the Sessions Court cannot be looked into and therefore, there is no substance in the aforesaid submission.

13. As regards the submission pertaining to territorial jurisdiction, it was submitted that there was no substance in the same in the context of the position of law as it existed on the date the complaint was filed. It was further submitted that even in the judgment rendered by three Hon'ble judges of the Supreme Court in the case of ***Dashrath Rupsingh Rathod Vs. State of Maharashtra, (2014) 9 SCC 129 and anr.*** was to be considered, it was clarified therein that the position of law as elucidated in the said judgment did not affect the complaints and proceedings that were already filed and pending. Even otherwise, it was submitted that the objection regarding territorial jurisdiction was never taken before the Magistrate and that therefore, the Sessions Court was justified in refusing to accept the same.

14. As regards the contention raised on behalf of the applicants concerning the question of legal debt or liability, it was submitted that the nature of defence sought to be raised before the Magistrate on the part of the applicants did not leave any scope for them to raise the aforesaid contention. It

was submitted that the stated case of the applicants before the Magistrate was that they were not at all liable to make any payment of the amount advanced by the respondent and that there was a final settlement by payment of Rs. 1, 00,000/- to the respondent. It was then claimed that subject cheques had been forcibly taken from one of the partners of the applicants and that signatures of the second partner were forged. The cross-examination of witnesses of the respondents, as well as the evidence led in defence on behalf of the applicants, was on these lines. On this basis, it was submitted that there was no substratum for the applicants to raise the aforesaid contention. In any case, the Magistrate found on proper analysis of oral and documentary evidence on record that even the said defence sought to be raised on behalf of the applicants was not supported by the material on record. On this basis, it was submitted that the revision application deserved to be dismissed. The learned counsel appearing for the respondent relied upon the judgment of this Court in the case of ***Rajendra Mahadeorao Chaudhary VS. Gajanan Keshavrao Bore, 2019 SCC online Bom 1561***, in the context of presumption that arises in such cases under Sections 118 and 139 of the aforesaid Act.

15. Heard learned counsel for the rival parties and perused the material on record. There cannot be any quarrel with the proposition that the jurisdiction being exercised by this Court in revision necessarily limits the scope to interfere in concurrent findings rendered by the two Courts below against the applicants. Nonetheless, if the applicants are able to demonstrate that the findings rendered by the two Courts below are erroneous, perverse and wholly unsustainable, the

impugned judgments and orders can certainly be interfered with.

16. A perusal of the material on record shows that in terms of the aforesaid contract executed between the parties, the applicants firm was supposed to supply iron ore of a particular quality to the respondent and that the respondent was supposed to make payment at the agreed rate to the applicants. As to whether the iron ore was of the quality as agreed between the parties, there was a term in the contract providing for analysis of the iron ore. There is no dispute about the fact that the respondent paid total amount of Rs. 12,70,000/- as advance to the applicants for supply of iron ore in terms of the aforesaid contract. It is a fact admitted by applicants in their evidence before the Magistrate. It is the case of the applicants that they had supplied 1500 metric tonnes of iron ore to the respondent in the first instance and thereafter, they supplied 1500 metric tonnes more to the respondent in terms of the contract.

17. On the other hand, the respondent asserted that only 1500 metric tonnes of iron ore was received and that too was of a lower grade and that it violated the terms of the contract. It was claimed that the second instalment of 1500 metric tonnes of iron ore was never received.

18. The material on record was appreciated by the Magistrate and it was found that the applicants were able to support their case only to the extent of supply of 1500 metric tonnes. As regards the oral and documentary evidence placed on record on behalf of the applicants regarding the second

installment for the supply of 1500 metric tonnes of iron ore, the Magistrate found that the applicants had failed to support such an assertion. The case of the respondent was accepted that the said supply on the second occasion was dumping of the material on some other property, which had no concern with the respondent. This finding has been confirmed by the Sessions Court while dismissing the appeal. This Court does not find any reason to take any other view in the matter.

19. Therefore, the material on record indicates that the applicants supplied 1500 metric tonnes of iron ore to the respondent. It was claimed by the respondent that iron ore was of a lower grade and therefore, it was entitled to repayment of the amount advanced to the applicants for the supply of iron ore. The assertion of the respondent that the iron ore was of lower grade is sought to be disputed by the applicants by referring to the terms of the contract and claiming that even the analysis of the iron ore purportedly undertaken by the respondent was in violation of the terms of the contract. But, at this stage, it is significant to note that the applicants never raised any dispute in this regard either by invoking the arbitration clause or otherwise by initiating any civil proceedings against the respondent in that regard.

20. The defence of the applicants from the inception before the Magistrate was that there was a final settlement between the parties in pursuance of which Rs.1,00,000/- was paid in cash to the respondent. This aspect of the matter is reflected in the complaint filed by the respondent also, where it is claimed that when the question of repayment of the amount was raised the applicants had indeed paid an amount of Rs.

1,00,000/- by cash, but thereafter, upon negotiations, the subject cheques amounting to total Rs. 9,00,000/- were issued by the applicants in the backdrop of the dispute that has arisen. Nowhere did the applicants in their reply to the complaint or in the stand taken before the Magistrate and even in the evidence led before the Magistrate raise any defence other than claiming that the subject cheques had been forcibly taken from one of the partners of the applicants no.1 firm and that the signature of the second partner was forged.

21. Even the said stated defence on behalf of the applicants was not supported by any evidence on their behalf. No material was placed on record to support that such an alleged incident had ever taken place where there was repeated harassment to the partners of the applicant no.1 and their families and that on that particular date the subject cheques were forcibly taken from one of the partners. The assertion as regards forged signatures of the second partner of the applicant no.1 firm was also not supported on behalf of the applicants by placing on record any evidence or material.

22. It is in this backdrop that the Magistrate appreciated the oral and documentary evidence on record. It was analyzed as to whether the presumption that arises in such cases under Section 118 and 139 of the aforesaid Act had been rebutted on behalf of the applicants. As noted above, since no evidence was led on behalf of the applicants to support their case of signature of the second partner being forged, the case proceeded on the basis that the cheques were signed by both the partners and that therefore, they were presumed to be in

discharge of legal debt or liability. As per the settled position of law, the presumption that arose against the applicants ought to have been rebutted by placing material on record to show that on the touchstone of preponderance of probabilities such presumption stood rebutted.

23. A perusal of the nature of cross examination of the witnesses of the respondent and the manner in which defence evidence was led by examining witnesses, it becomes clear that the material brought on record fell way short of rebutting the presumption that operated against the applicants. The elaborate submissions sought to be made before this Court on behalf the applicants on the aspect of the alleged failure of the respondent to give details of the account and crystalized form of legal debt or liability is not supported by the material available on record. In fact, with the nature of stand taken before the Magistrate and the manner in which oral and documentary evidence was led on behalf of the applicants, it becomes clear that there is no scope for the applicants to raise such a contention in revisional jurisdiction before this Court.

24. Even otherwise, since it was the respondent who had admittedly paid the amount of Rs.12,70,000/- to the applicants and even according to the applicants the question as regards repayment had arisen in the backdrop of the dispute between the parties, it was for the applicants to show that the liability had been satisfied. No efforts were made on behalf of the applicants in that direction and the reason is obvious because the nature of the defence taken before the Magistrate was completely different. As noted above, the defence of the applicants was that the cheques were forcibly

taken from one of the partners and that they were never issued by the applicant no.1 firm.

25. In so far as the judgment in the case of ***Basalingappa Vs Mudibasappa***(supra) is concerned, this Court is of the opinion that the same is not applicable to the facts of the present case. The sentence in paragraph 28 thereof, upon which the learned counsel appearing for the applicants has placed much reliance, pertains to the position that the Court cannot insist upon a person to lead negative evidence. The said sentence is sought to be read out of context. A proper appreciation of the facts before the Hon'ble Supreme Court would show that in the said case it found, as a matter of fact, that the High Court had erred in insisting upon the accused to prove negative evidence. In the present case, the facts are completely different and said judgment is not applicable.

26. In so far as the judgment of this Court in the case of ***M/s Jinarj Paper Udyog Vs M/s Dinesh Associates*** (supra) is concerned, it pertains to the question of territorial jurisdiction. It was a judgment rendered way back on 23.10.2008, before the Judgment of the Hon'ble Supreme Court in case of ***Dasharath Rupsingh Rathod Vs State of Maharastra and anr.(supra)*** was rendered. Before the aforesaid judgment of the Hon'ble Supreme Court rendered in ***Dasharath Rupsingh Rathod Vs State of Maharastra and anr(supra)***, the earlier judgment in the case of ***K. Bhaskaran Vs Sankaran Vidhyan Balan and another, (1999)7 SCC 510***, was holding the field. Therefore, the said judgment can be of no assistance to the applicants. Even otherwise as noted above, the question of

territorial jurisdiction was correctly decided by the Sessions Court for the reason that no such objection was ever raised on behalf of the applicants before the Magistrate.

27. In view of the above, this Court finds that no case for interference is made out on behalf of the applicants in revisional jurisdiction. Accordingly, the revision application is found to be without any merits and it is dismissed.

MANISH PITALE, J.

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