

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL REVISION APPLICATION NO.1 OF 2021
WITH
CRIMINAL MISCELLANEOUS APPLICATION
NO.11/2021
IN
CRIMINAL REVISION APPLICATION NO.1/2021**

Ratnakant Krishna Gaude
aged 45 years, r/o. H.No.123,
Satode, Vangal, Keri,
Ponda, Goa 403 401,
presently in Judicial Custody
Modern Jail at Colvale Mapusa.

... Petitioner

V e r s u s

VPK Urban Cooperative Credit
Society Ltd., with its head office at
Mardol, Ponda-Goa, duly represented
by its Authorised Officer
Mr. Vaman Shantaram Gaude,
aged about 42 years,
R/o C/o V.P.K Urban Co-op. Society,
opposite Municipal Garden,
Sumit Classic Building,
Ponda – Goa.

... Respondent

Mr. Anup Gaonkar, Advocate for the Petitioner.

Mr. Jatin Ramaiya, Advocate for the Respondent.

CORAM : M. S. SONAK, J.

DATE : 16th February, 2021

P.C.

Heard Mr. Anup Gaonkar for the Petitioner and Mr. Jatin Ramaiya for the Respondent Society.

2. With the consent of the learned counsel for the parties, this revision application is taken up for final disposal.

3. The petitioner has been convicted under Section 138 of the Negotiable Instruments Act, 1881 for dishonour of a cheque in an amount of ₹1,63,700/-. There are concurrent findings recorded by the two courts and ordinarily no case is made out to warrant interference as such.

4. Mr. Gaonkar however points out that the petitioner is a driver living in the interiors of Goa (Keri, Ponda, Goa). He pointed out that on account of the Covid'19 pandemic situation, the petitioner was unable to arrange for finances to pay to the respondent-Society, even though the petitioner had every intention to do so.

5. Mr. Gaonkar pointed out that as of now, the petitioner has paid substantial portion of the cheque amount to the Society and only an amount of ₹45,000/- is due. He pointed out that even out of this amount, ₹32,500/- stands deposited before the Sessions Court and the petitioner, will have no objection whatsoever to the

Society withdrawing the said amount unconditionally. Mr. Gaonkar states that the petitioner will pay the balance amount of ₹17,500/- today itself to the Society.

6. Mr. Gaonkar submits that this Court, taking into consideration the aforesaid facts and circumstances be pleased to accept the request of the petitioner to compound the offence.

7. Mr. Ramaiya, the learned counsel for the respondent Society points out that normally in such matters, the petitioner seeking compounding must be made to pay some costs. He relies on *Damodar S. Prabhu v. Sayed Babalal H. - (2010) 5 SCC 663*, in support of this contention.

8. Though, Mr. Ramaiya is absolutely right in his contention, in the peculiar facts of the present case, the petitioner can be excused from paying costs. Mr. Gaonkar has pointed out that the petitioner has made every effort to clear the dues to the Society and this is evident from the conduct of the petitioner. The petitioner hails from a village located in the interiors and he is only a driver by profession. The Covid'19 Pandemic must have hurt the petitioner and affected his employment. At this stage therefore, it is not necessary to impose any costs upon the petitioner though, Mr. Ramaiya is quite justified in submitting that in such matters costs must be imposed.

9. Since, the dues as against the dishonoured cheque are being cleared in full, there is no difficulty in accepting the plea for compounding.

10. Mr. Gaonkar states that the amount of ₹17,500/- has been handed over to the learned counsel for the Society today itself.

11. Taking into consideration all the aforesaid facts and circumstances, leave is granted to the parties to compound the offences. The offences are deemed to be compounded and based thereon, the impugned judgments and orders are hereby set aside.

12. The petitioner is reported to be in custody, having surrendered on 12.02.2021, consequent upon the dismissal of his appeal. Now that the offence is compounded and the impugned judgments and orders are set aside, the petitioner Ratnakant Krishna Gaude will have to be released forthwith.

13. The revision application is consequently disposed of in the aforesaid terms. Miscellaneous application seeking bail does not survive and is also disposed of.

14. The Registry to ensure that the Writ is issued by today itself so that the petitioner can be released at the earliest.

15. All concerned to act on the authenticated copy of this order.

M. S. SONAK, J.

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