

Meena

**IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL MISC. APPLICATION NO. 39 OF 2021**

BANK OF INDIA, REP. BY ITS POA, ...Applicant
SALVADOR JESSIE FIJARDO.

VS

GAUTAM R. GAIKWAD ...Respondent

Mr. Balkrishna Sardessai, Advocate *for the applicant.*

Mr. Arjun Naik, Advocate *for the respondent.*

CORAM: MANISH PITALE, J

DATED: 25th November, 2021

P.C.

1. The applicant before this Court is the original complainant who has filed the present application seeking leave to appeal under Section 378(4) of the Code of Criminal Procedure. The applicant is aggrieved by the order dated 21/01/2020 passed by the Court of Chief Judicial Magistrate, Margao, whereby a complaint has been dismissed on the ground that neither the complainant nor the Advocate for the complainant was present when the matter was called out.

2. Mr. Sardesai, learned Counsel appearing for the applicant submitted that the present case was a fit case for grant of leave to appeal, for the reason that the complaint of the applicant filed under Section 138 of the Negotiable Instruments Act, 1881 stood dismissed without any consideration of the merits of the matter.

3. It was submitted that in the present case a perusal of the Roznama of the aforesaid Court of Chief Judicial Magistrate would show that, at worst, there was only a single default on the part of the applicant (original complainant) and his Advocate. It was further submitted that the Advocate had filed an affidavit explaining the circumstances in which none could remain present on behalf of the applicant on the date when the order has passed dismissing the complaint.

4. This Court has perused the Roznama as well as the Affidavit filed by the concerned Advocate. There is reasonable explanation placed on record as to why none could remain present on the date when the complaint was dismissed.

5. Although the learned Counsel appearing for the respondent has opposed the present application and it is contended that the

applicant does not deserve any indulgence from this Court, in the interest of justice, this Court is of the opinion that the present application deserves to be allowed.

6. The applicant is granted leave to appeal against the order dated 21/01/2021 passed by the Chief Judicial Magistrate Margao dismissing the complaint of the applicant.

7. The application stands disposed of.

MANISH PITALE, J.

MEENA
VISHAL
BHOR