

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL REVISION APPLICATION NO. 19 OF 2020
WITH
CRIMINAL MISC. APPLICATION NO. 97 OF 2020

Santosh Kumar Kaddapa More

... Applicant

Versus

1. The Gokul Urban Co-op Society, Margao, ... Respondents
Rep. Thr. Its Aut. Rep. Pradip Prema
Prabhudesai & anr.

Mr. Ganesh Naik, Advocate for the Applicant.

Mr. A. D. Bhole, Advocate with Ms. Annelise Fernandes, Mr. Chirag Angle and Ms. Kalpa Govenkar, Advocates for the Respondent no.1-Bank.

Mr. G. Nagvenkar, Additional Public Prosecutor for the Respondent no.2-State.

CORAM: MANISH PITALE, J

DATED: 27th January 2022

ORAL ORDER

1. Heard Mr. Ganesh Naik, learned Counsel appearing for the Applicant and Mr. A. D. Bhole, learned Counsel appearing for the Respondent no.1-Bank.

2. By the present Revision Application, the Applicant (original Accused), has approached this Court challenging concurrent orders passed by the Judicial Magistrate First Class, Margao, and the Sessions Court, Margao. This is a matter arising out of a complaint filed by the Respondent-Bank under Section 138 of the Negotiable Instruments Act, 1881 (*said Act*, for short). The Magistrate has convicted the Applicant for offence under the said provisions and imposed a sentence upon him to undergo simple imprisonment for two months

and to pay compensation of ₹ 3,65,000/- to Respondent-Bank. It is undisputed that the cheque amount was ₹ 3,60,910/-.

3. It was the case of the Respondent-Bank, the original Complainant, that the Applicant had approached the said Respondent for a loan of an amount of ₹ 6,00,000/-. Since the Applicant was not a member of the Respondent-bank, which is an Urban Co-operative Society, the said fact was also taken into consideration while processing the request of the Applicant for grant of loan.

4. According to the Respondent-Bank, the account of the Applicant was opened in the Respondent-Bank in pursuance of the request of disbursement of loan and after sanctioning the loan, an amount of ₹ 6,00,000/- was disbursed in the account of the Applicant with the Respondent-Bank. It was the case of the Respondent that an amount of ₹3,00,000/- was withdrawn by the Applicant on the same day i.e. 15.07.2016 and balance amount of ₹2,64,100/- remained in the account, as charges towards membership of the Applicant in the Respondent-Bank, were debited. It was the case of the Respondent that it was later found that the Applicant was not likely to use the loan amount for the purpose for which it was sought and that it was also found that there was some forgery in RTO documents as a result of which, the Respondent-Bank was constrained to recall the loan and adjust the amount of ₹2,64,100/- towards the loan. According to the Respondent-Bank, it was concerned with return of ₹3,00,000/- with interest from the Applicant and that it was in this context that the Applicant on 19.01.2017, issued the subject cheque of ₹3,60,910/-. There is no dispute about the fact that the aforesaid cheque was dishonoured and the Respondent-Bank was constrained to file the complaint under Section 138 of the aforesaid Act.

5. The Applicant resisted the claims of the Respondent-Bank as a result of which the matter went to trial before the Court of Magistrate. After considering the oral and documentary evidence placed on record, the Magistrate convicted the applicant and sentenced him in the aforesaid manner.

6. Aggrieved by the same, the Applicant filed an Appeal before the Sessions Court, which was dismissed by Judgment and Order dated 24.01.2020. As a result, the Applicant is before this Court challenging the concurrent findings rendered against him.

7. Mr. Naik, learned Counsel appearing for the Applicant, submitted that in the present case, the Respondent-Bank had failed to prove the basic requirement of the cheque having been issued for legal debt or liability. It was submitted that when the loan itself stood recalled, there was no question of there being any legal debt or liability to be satisfied by him. It was further submitted that the Magistrate recorded that the Respondent-Bank had disbursed the amount in an account with the Respondent-Bank itself and that this factor had a crucial bearing on the present case. It was submitted that the Magistrate failed to appreciate this aspect of the matter and erred in convicting and sentencing the Applicant, which the Sessions Court also failed to appreciate while dismissing the Appeal. No other point was raised on behalf of the Applicant.

8. On the other hand, Mr. A. D. Bhobe, learned Counsel appearing for the Respondent-Bank, submitted that the Magistrate had correctly recorded the sequence of events from the time the Applicant applied for loan, till the default on the part of the Applicant was obvious in

respect of which the subject cheque was issued. By referring to the order passed by the Magistrate, the learned Counsel demonstrated that documentary material was placed on record before the Magistrate to prove the claims of the Respondent-Bank. It was submitted that the legal debt or liability was specifically limited to the amount of ₹3,00,000/- which the Applicant had admittedly withdrawn and the subject cheque was issued to return the said amount along with interest. On this basis, it was submitted that the aspect of legal debt or liability was correctly appreciated by the Magistrate, while convicting and sentencing the Applicant and that the Sessions Court was also justified in dismissing the Appeal.

9. This Court has heard the rival contentions and perused the material on record. The case of the Respondent-Bank was that although the loan amount was disbursed for a particular purpose, the utilization of the same did not appear to be for the said purpose. There was reference made to certain RTO documents which were forged, due to which, the Respondent-bank became aware that immediate action was required in respect of the loan disbursed to the Applicant. The material on record demonstrates that an account of the Applicant was opened with the Respondent-Bank.

10. In this backdrop, the Respondent-bank adjusted the balance amount i.e. ₹2,64,100/- towards the outstanding loan and proceeded on the basis that amount of ₹3,00,000/- withdrawn by the Applicant was to be returned with applicable interest. The record shows that the Respondent-Bank placed on record statement of the savings bank account of the Applicant with the Society as exhibit 34 and statement at exhibit 28 was also placed in support of the claim of the bank that the amount recoverable from the Applicant along with interest came to

₹3,60,910/-. Since the aforesaid documentary evidence was placed on record to support the oral evidence of the witnesses examined in support of the case of the Respondent-Bank, it becomes clear that the conclusion rendered by the Magistrate that the subject cheque was indeed for satisfying the said outstanding amount and therefore relatable to legal debt or liability, cannot be said to be erroneous. The aforesaid conclusion is based on proper appreciation and interpretation of oral and documentary evidence on record. There is no dispute about the fact that the subject cheque was signed by the Applicant and that, therefore, the presumption under Sections 118 and 139 of the aforesaid Act applied in full force. There was nothing brought on record on behalf of the Applicant to rebut such presumption and hence, it cannot be said that the conviction of the Applicant was erroneous. The sentence imposed by the Magistrate also appears to be reasonable given the facts and circumstances of the present case.

11. The Sessions Court took into consideration the aforesaid factors and correctly found that the Appeal filed by the Applicant deserved to be dismissed.

12. In view of the above, this Court finds that no case is made out for interference with the concurrent orders passed by the two Courts below. Accordingly, the Revision Application is dismissed.

13. Consequently, amounts deposited by the Applicant before the Sessions Court during the pendency of the Appeal and before this Court during the pendency of the Revision Application, if any, shall be disbursed forthwith in favour of the Respondent-Bank.

14. Pending Misc. Application, if any, also stands disposed of.

MANISH PITALE, J