

Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA

**CRIMINAL APPEAL NO. 11 OF 2015
WITH
CRIMINAL APPEAL NO.21 OF 2018**

CRIMINAL APPEAL NO. 11 OF 2015

The Quepem Urban Co-op. Credit Society Ltd.,
Regd. Office at Cindio Apartments,
Ground Floor, Quepem, Goa

...Appellant

Versus

1. Shri Datta Shambu Naik,
Major in age,
Residing at House No.300/B,
Capxem, Curchorem, Goa

2. State
Represented by Public Prosecutor
High Court, Panaji Goa.

...Respondents

**WITH
CRIMINAL APPEAL NO.21 OF 2018**

The Quepem Urban Co-op. Credit Society Ltd.,
Regd. Office at Cindio Apartments,
Ground Floor, Quepem, Goa.

...Appellant

Versus

1. Shri Nilkanth Babu Velip,
Major in age, residing at House No.1463,
Paz, Shiroda Goa

2. State
Represented by Public Prosecutor
Panaji Goa.

...Respondents

Mr. Abhay Nachinolkar with Mr. Siddhant Kamat Dhakankar and Mr. H. Vaze, Advocates *for the Petitioner.*

Mr. Ashwin D. Bhobe with Ms. Annelise Fernandes, Mr. Chirag Angle *and* Ms. S. Shaikh, Advocates for the Respondent No.1.

Mr. Gaurish Nagvenker, Additional Public Prosecutor, *for Respondent No.2.*

CORAM: BHARAT P. DESHPANDE,J.

Reserved on: 22nd September 2022

**Pronounced
on: 03rd October 2022**

JUDGMENT:

In both these appeals, common questions of facts and law are raised and therefore taken up for final disposal together. The learned counsel appearing for the parties agreed that both these matters could be disposed of by a common judgment.

2. Criminal Appeal No.11 of 2015 is challenging the judgment dated 21/10/2013 passed in Criminal Appeal No.48 of 2012 by the learned Additional Sessions Judge-I, South Goa Margao whereby the judgment of conviction dated 27/03/2012 passed by the learned J.M.F.C.,Quepem in Criminal Case No.103/NI/2010/B was quashed and set aside and the respondent/accused was acquitted of the offence punishable under Section 138 of the Negotiable Instruments Act,1881.

3. Criminal Appeal No.21 of 2018 is challenging the judgment dated 17/06/2017 in Criminal Appeal No.51 of 2013 passed by the learned Additional Session Judge, South Goa, Margao thereby allowing the said appeal and accordingly quashing and setting aside the judgment of conviction passed by the learned Judicial Magistrate First Class, Quepem in Criminal Case No.38/NI/2009/B. The respondent/accused was accordingly acquitted for the offences punishable under Section 138 of the Negotiable Instruments Act.

4. In both, the matters appellant is the same i.e. The Quepem Urban Credit Society whereas the respondents are different. However, since common grounds are raised, both these matters are taken together for disposal.

5. Heard Mr. Abhay Nachinolkar, learned Counsel for the appellant, Mr. A.D. Bhobe, learned Counsel for respondent No.1 and Mr. Gaurish Nagvenkar, Additional Public Prosecutor for respondent No.2.

6. With the assistance of the learned Counsel appearing for the respective parties, I have perused the entire record and particularly the judgments and reasoning of the learned Magistrate and that of the First Appellate Court.

7. Shri Abhay Nachinolkar, appearing for the appellants in both the matters submitted that the learned Additional Sessions Judge while acquitting both the accused persons erred in accepting the contentions raised in the grounds and more particularly, disbelieving the authority given to the witness to file the complaint. He, therefore, submitted that the question in both the appeals is whether a witness had authority to file complaint.

8. Learned counsel Shri Nachinolkar then submitted that in Criminal Appeal No.21 of 2018, apart from the above question, there is additional ground wherein the learned Additional Sessions Judge erred in holding that the learned Magistrate at Quepem had no territorial jurisdiction to entertain and decide the complaint.

9. While elaborating his arguments, learned counsel Shri Nachinolkar pointed out the resolution passed by the complainant in favour of PW1 and submitted that the word "proceed" means to start or initiate the proceedings and not to continue with the proceedings already filed, as tried to be interpreted by the learned Additional Sessions Judge. In this respect, he placed reliance on the dictionary meaning of the word

"proceed" and claimed that the actual meaning of the word "proceed" is to institute and conduct legal action or begin the course of action. He, therefore, submitted that the resolution gives power to PW1 to begin the proceedings thereby instituting complaint and thereafter adducing the evidence to that effect on behalf of the complainant.

10. Learned counsel Shri Nachinolkar submitted that leaving aside the power of attorney produced on record, the resolution itself is sufficient enough to give power to the complainant/PW1 to start the proceedings. He, therefore, invited attention to Section 142 of the Negotiable Instruments Act as far as filing the complaint. He submitted that there are no two views possible in order to interpret the word "proceed" as found in the resolution and, therefore, observations of the learned Additional Sessions Judge contrary to the dictionary meaning have to be discarded and set aside.

11. Learned counsel Shri Nachinolkar then submitted that in Criminal Appeal no.21 of 2018, apart from the power to file a complaint on the basis of same resolution, the learned Additional Sessions Judge observed that the Magistrate at Quepem had no territorial jurisdiction. He submitted that such findings are given

based only on the decision of the Hon'ble Apex Court in the case of '*Harman Electronics (P) Ltd. V/s National Panasonic India Ltd.*¹ He then claimed that the learned Additional Sessions Judge did not consider the findings of the learned Magistrate which are based on the decision of the Apex Court in the case of *K. Bhaskaran v/s. Shankaran Vaidhyan Balan And Another*². He then claimed that the learned Additional Sessions Judge failed to consider the decision of the Apex Court in the case of *Dashrath Rupsingh Rathod v/s. State of Maharashtra and Another*³ as before deciding the said criminal appeal, the decision in the case of *Dashrath Rathod* (supra) was delivered. He, therefore, submitted that the non-suiting of the complainant on the so-called ground of lack of jurisdiction of the learned Magistrate was totally erroneous, in view of the directions issued by the Apex Court in the case of *Dashrath Rathod*(supra). The proper course that would have been adopted by the learned Additional Sessions Judge, at the most, was to transfer the said case to the jurisdictional court. He, therefore, submitted that while non-suiting the complainant, the learned Additional Sessions Judge did not discuss how the observations in the case of *Bhaskaran* (supra) and more particularly, relied upon by the learned

1(2009) 1 All MR 479

2(1999) 7 SCC 510

3(2014) 9 SCC 129

Magistrate, are not applicable to the facts and circumstances of the present case.

12. Per contra, learned counsel Shri Ashwin D. Bhobe, appearing for the respondents in both the cases submitted that no interference is warranted in the decision passed by the learned Additional Sessions Judge as the view taken therein is a plausible view and while dealing with an appeal against such orders and even if another view is possible, the same shall not be replaced.

13. Learned counsel Shri Bhobe then submitted that the wordings in the resolution of the Society are very clear and there is nothing to show that any power was given to the complainant/PW1 to initiate proceedings. He submitted that the word "proceed all the cases" as found mentioned in the resolution cannot be interpreted in the way as tried by the appellants as there is no ambiguity in the said resolution. It literally means "to continue with the proceedings which are already initiated", as rightly observed by the learned Additional Sessions Judge in both matters. He submitted that the appellants are now trying to take advantage of the dictionary meaning which is not permissible as PW1 in his cross-examination clearly admitted that he had no power under the said resolution to initiate criminal proceedings. Therefore, once the witness admits that he had no power, which

he understood correctly as per the wordings of the resolution, no interference is necessary in the observations of the impugned orders.

14. Learned counsel Shri Bhobe then submitted that when the complainants realised their mistake, they tried to introduce another resolution by way of re-examination of the complainant so as to clear the defect in the earlier resolution. This attempt on the part of the complainant clearly goes to show that even the complainant and its officers were of the opinion that the earlier resolution nowhere disclosed the power to initiate proceedings. Therefore, such attempt itself proves that the earlier resolution was not specifically giving any authority to PW1 to lodge criminal proceedings.

15. Learned counsel Shri Bhobe then pointed out that the Power of Attorney produced on record specifically shows the power to initiate the proceedings. However, such Power of Attorney was executed in favour of PW1 on the basis of the resolution passed by the Managing Committee wherein no such power to initiate proceedings is found. Thus, according to him, such Power of Attorney is bad in law as the source on which it was issued does not give such power to initiate such proceedings.

16. Learned counsel Shri Bhobe then submitted that in the case of **Harman** (supra), the Hon'ble Apex Court clearly observed that the Court will not have jurisdiction only because demand notice is issued within the jurisdiction of such Court. He, therefore, submitted that even though the case of **Harman** (supra) nowhere distinguishes earlier decision in the case of **Bhaskaran** (supra), which is of the coordinate Bench, the doctrine of choice applies and which the learned Additional Sessions Judge has opted to consider the law laid down by the Apex Court in the case of **Harman** (supra) no fault can be found with such observation as both these judgments are binding on the Courts below. He then submitted that while exercising the doctrine of choice, the judgment which is closer to facts and law has to be taken into account while deciding the matter at hand. According to him the ratio in the case of **Harman** (supra) is more closer to the facts and circumstances of the matter in Criminal Appeal No.21 of 2018 which has been rightly considered by the learned Additional Sessions Judge and thus no interference is warranted.

17. Learned Shri Bhobe placed reliance on the following decisions:

- a) ***The Goa State Co-op. Bank Ltd. v/s. M/s. Kurtarkar Traders***⁴

4(2009) ALL MR (Cri) 3617

- b) *Shri Ashok Bampto Pagui v/s. M/s. Agencia Real Canacona Pvt. Ltd. & Anr*⁵.
- c) *M/s. Alka Toraskar v/s. The Vaishya Urban Co-op. Credit Soc. Ltd. & Anr.*⁶
- d) *Chandraprabha Vasant Mhaske v/s. Ganesh Marya Waghe & Ors*⁷.
- e) *Bridgestone India Private Limited v/s. Inderpal Singh*⁸

18. Having heard learned counsel for the respective parties extensively, the points which need consideration in the present Appeals are as under together with my findings against.

- (i) Whether a witness/attorney by name Surendra Mahadev Gaunkar had authority to file the complaint on behalf the complainant(above point is common in both the appeals).
- (ii) Whether the learned Magistrate at Quepem had territorial jurisdiction to try and decide the complaint filed on behalf of the complainant.

19. Briefly, the facts arising out of Criminal Appeal no.11 of 2005 are as under:

The parties are herein referred as 'complainant' and

5(2007) ALL MR (Cri) 2338

6(2006) (6) ALL MR 397

7(2017) 0 ALL MR (Cri) 2912

8(2016) 2 SCC 75

'accused' for the sake of 'brevity as they appear before the learned Magistrate.

20. On 25.01.2005 accused Datta Shambu Naik (Criminal Case No.103/NI/2010/B) availed loan from the complainant. On 05.11.2009 accused issued a cheque bearing No.094660 for an amount of Rs.1,28,100/- drawn on Bicholim Urban Co-operative Bank, Curchorem Branch in favour of the complainant towards repayment of the said loan.

21. On 29.01.2010 the said cheque was dishonoured on presentation for funds insufficient. On 15.02.2020 demand notice was issued which the accused received on 16.02.2010. On 03.04.2010 accused approached the complainant and agreed to repay the entire cheque amount and signed a copy of the legal notice. On 16.04.2020 complaint was lodged under Section 138 of the Negotiable Instruments Act since the accused failed to pay the cheque amount within the stipulated time. On 27.03.2012 the learned Magistrate at Quepem found the accused guilty for the offence punishable under Section 138 of the Negotiable Instruments Act. On 07.04.2012 the learned Magistrate passed a sentence against the accused and directed him to undergo simple imprisonment for a period of one month and to pay compensation of ₹1,50,000/- and in default to undergo simple

imprisonment for a period of one year. Being aggrieved by the said judgment and conviction, the accused preferred appeal on 30.04.2012 before the Sessions Court bearing Criminal Appeal No.48 of 2012. On 21.10.2013 learned Additional Sessions Judge vide its impugned judgment allowed the said appeal and thereby quashed and set aside judgment and conviction passed by the learned Magistrate in Criminal Case No.103/NI/2010/B and accordingly acquitted the accused. Accordingly, the complainant preferred an appeal bearing Criminal Appeal No.11 of 2015 before this Court.

22. The brief facts in Criminal Appeal no.21 of 2018 are as under:-

The accused by name Nilkhant B. Velip availed loan from the complainant Society on 25.01.2005. On 18.02.2009 accused Nilkanth issued a cheque bearing No.0624295 amounting to Rs.70,100/- drawn on Goa State Co-operative Bank Ltd., Shiroda in favour of the complainant towards repayment of the loan instalments overdue. On 23.02.2009 said cheque was returned unpaid for funds insufficient. On 09.03.2009 demand notice was issued by the complainant which was received by the accused on 17.03.2009. On 20.04.2009 complaint was lodged under Section 138 of the Negotiable Instruments Act before the learned

Magistrate at Quepem by the complainant.

23. On 21.02.2013, the learned Magistrate at Quepem found the accused guilty of the offence punishable under Section 138 of the Negotiable Instruments Act and sentenced him to undergo simple imprisonment for a period of one month and to pay compensation of ₹75,100/- and in default to undergo simple imprisonment for a period of 6 months. Being aggrieved by the said judgment and conviction, the accused preferred an appeal on 23.04.2013 before the Sessions Court which was registered as Criminal Appeal No.51 of 2013. On 17.06.2017 the learned Additional Sessions Judge, Margao allowed the said appeal thereby quashing and setting aside the judgment passed by the learned Magistrate and acquitting the accused for the offence punishable under Section 138 of the Negotiable Instruments Act. The complainant, therefore, preferred present appeal bearing Criminal Appeal No.21 of 2018 before this Court.

24. The common aspect in favour of these appeals is the authority of the witnesses of the complainant to initiate criminal proceedings.

25. Criminal Case No.103/NI/2010/B was filed before the

Quepem Court under Section 138 of the Negotiable Instruments Act. The cause-title shows that the Society is represented by its Attorney Shri Surendra Mahadev Gaonkar. Paragraph 2 of the said complaint show that the complainant Society is represented in this case by its Attorney Shri Surendra Mahadev Gaonkar by a deed of Power of Attorney duly executed on 12.11.2009 as per the resolution passed in the Board of Directors' meeting dated 10.11.2009.

26. Criminal Case No.30/NI/2009 filed before Quepem Court show the cause-title that the Society is represented by its Attorney Shri Satyawar Naryan Velip. In paragraph 2 of the complaint, it is further clarified that the complainant Society is represented by its Attorney Shri Satyawar Naryan Velip on the basis of the Deed of Power of Attorney duly executed on 10.10.2007 as per the resolution passed in the Board of Directors' meeting dated 08.09.2007.

27. Thus, both these complaints filed by the Society against the accused persons clearly show averments that the Society is represented by its Attorney on the basis of the power of attorney which is executed on the basis of a resolution of the Board of Directors.

28. The learned counsel Shri Nachinolkar appearing for the appellant submitted that the resolution passed by the Board is itself sufficient to give power to the said attorney to initiate proceedings and there is no need even to consider the power of attorney executed on behalf of the Society in favour of such attorney. He submitted that the power of attorney could be ignored in view of a specific resolution passed by the Board.

29. Thus, it is necessary to quote the resolution of the Board of Directors so as to interpret the wording in it and to find out whether any specific power was given to PW1 in both the matters by the Society to launch proceedings.

30. The resolution of the appellant Society in Criminal Appeal no.11 of 2015 is dated 11.11.2009 which reads thus:-

'Resolution No.5(I):- *It is hereby resolved that Shri SURENDRA MAHADEV GAONKAR, aged about 26 years, son of Shri Mahadev Gaonkar, residing at Bendurdem, Balli, Quepem-Goa, presently working as Legal Officer in the Head Office of this Society shall be appointed and/or nominated as the Attorney for the Society to represent the Society before all the Civil and Criminal Courts including Tribunal, Registrar of Co-operative Societies, Co-Operative Court, Co-operative Tribunals or before Assistant Registrar or the nominee of the Registrar and shall be given power to conduct, lead Evidence, represent and proceed all the cases, disputes*

litigations, executions, proceedings including criminal cases on behalf of and for the Society.'

31. Criminal Appeal No.21 of 2018, which is arising out of Criminal Case No.38/NI/09/B, show that the attorney of the complainant was Shri Satyawan Narayan Velip. However, subsequently, affidavit in evidence of the complainant was filed by Shri Surendra Mahadev Gaonkar as an attorney and the same resolution quoted above dated 11.11.2009 is produced alongwith the deposition at Exhibit 48 (page 84 of the paper-book). Thus, the wording in the said resolution needs to be considered in order to find out whether any powers were given to Shri Surendra Mahadev Gaonkar to institute proceedings and, more particularly, criminal proceedings.

32. Section 138 of the Negotiable Instruments Act provides that the payee or the holder in due course of the cheque must make demands for the payment of the said cheque by giving notice; in writing and in case of failure of payment of the amount mentioned in the cheque within the stipulated period, the complaint could be filed within a period of one month of the date on which the cause of action arose under clause (c) of the proviso to Section 138. Thus, the payee or the holder in due course is the Society/complainant herein as the cheque was issued in the name

of the Society itself which is clear from the cheque produced on record. Admittedly, the Society has to be represented by an authorised person before the Court of law either to launch prosecution of a case or to defend. Society has to authorise such a representative by a procedure adopted and recognized by law. Thus, the settled procedure to appoint the representative to represent the Society is by way of a resolution passed in the meeting of the Board of Directors of the said Society. In the present matters such resolution exists and is produced in both matters through PW1. However, it is the main contention of the accused persons that there is no whisper in such resolution thereby granting power to the representative to institute criminal proceedings for and on behalf of the Society against third parties. Whereas it has been forcefully submitted on behalf of the complainant Society that the resolution itself gives clear and sufficient powers to the said representative mentioned therein to institute criminal proceedings for and on behalf of the Society.

33. The main thrust on behalf of the accused persons is on the interpretation which is adopted by the learned Additional Sessions Judge in both the matters thereby observing that the words "proceed all the cases" as found in the resolution cannot be interpreted otherwise but has to be considered that the authority

is given to proceed in all cases which are pending as on the date of resolution. In other words, both the learned Additional Sessions Judges accepted the contentions of the accused persons that such resolution nowhere gives power to the representative to file criminal cases but only authorised him to appear and conduct the pending cases.

34. The learned Additional Sessions Judge while deciding Criminal appeal no.48 of 2012, which is the subject matter in challenge in Criminal Appeal No.11 of 2015 observed in paragraph 30 as under:-

'.....

It is thus settled law that power to file a complaint can be conferred on any person only by resolution of Board of Directors. In the case at hand the resolution on which the complainant has relied does not authorize Shri Surendra to execute or file a complaint. The Learned Magistrate therefore could not have even issued process against the accused on the strength of the complaint filed by an unauthorized person.'

35. While arriving at such conclusion and while deciding point no.3, the learned Additional Sessions Judge observed in paragraph 23 that the resolution does not confer power on said Surendra to file or initiate a complaint. It further observed in paragraph 24 of the impugned judgment that in the cross-examination Shri

Surendra/PW1 admitted that resolution does not specifically mention that he has been empowered to file present complaint against the accused. On this premise, the appeal was allowed holding that the said representative was not having any authority to launch prosecution on behalf of Society.

36. In Criminal Appeal No.21 of 2018 wherein the judgment passed by the learned Additional Sessions Judge arising out of Criminal Appeal No.51 of 2013, it has been observed from paragraph 19 of the impugned judgment that said Surendra Mahadev Gaonkar was not having authority to file complaint. Point no.2 for determination in the impugned judgment is discussed from paragraph 27 onwards. After quoting the specific wordings in the resolution, the learned Additional Sessions Judge observed in paragraph no.29 as under:-

'29. Therefore, the Resolution did not give powers to Shri Satyawar Narayan Velip to file or institute Criminal cases, though it gives him powers to proceed in all the cases and, as submitted by Ld. Adv. Shri S. M. Tendulkar, the word "proceed" presumes that there is already a proceedings filed, which has to be proceeded with and does not include the word "file" or "initiate".'

37. Thus, the learned Additional Sessions Judge went on the

premise that the word "proceed" does not include any new proceedings to be initiated but to mean that the power is to proceed with the pending matters.

38. In order to find out the actual meaning of the word "proceed", learned counsel Shri Nachinolkar placed reliance on the dictionary meaning and more particularly the Oxford Reference Dictionary wherein the word "proceed" is defined as under:-

'proceed.v1. begin a course of action. 2. go on to do something. 3 (of an action) continue. 4. move forward.'

39. He therefore submitted that the dictionary meaning of the word "proceed" has to be adopted which is the actual meaning as stated above. Therefore, according to him, both the learned Additional Sessions Judge erred in considering the meaning of word "proceed" and arrived at a wrong conclusion.

40. Learned counsel then submitted that in the case of ***M/s Harman Electronics*** (supra), the Hon'ble Apex Court considered the definition of the wording 'giving of notice' and how it is distinguished from 'receiving of the notice' as defined in the Black's Law Dictionary which is found in paragraph no.10 of the above decision. He, therefore, submitted that there is nothing

adverse in finding out the dictionary meaning of a word in order to interpret correct meaning of it, specifically when such wording has been interpreted in a different meaning and context by the Courts below in the impugned judgment.

41. There is substance in the submissions of the learned counsel appearing for the appellant in the above respect and the word "proceed" has to be looked into and considered with the meaning provided in the dictionary and it is actually defined as "begin course of action". If we consider such definition of the word "proceed all the cases", it literally means that "to begin the course of action", "to initiate and conduct legal action" or "to initiate a legal action".

42. Only because the word "proceed" is followed by "all the cases", in the resolution, cannot change the meaning of the word "proceed" in literal sense. The word "all the cases" has to be interpreted as the cases to be filed or initiated by the concerned person who has been given authority by the Board of Directors under the said resolution.

43. Learned counsel Shri Bhobe appearing for the respondent placed reliance on the decisions to canvas his arguments that when there is no authority given by the Board of Directors, such

person cannot initiate the proceedings. Firstly, he relied upon the case of *Goa State Co-op. Bank Ltd., v/s. M/s. Kurtarkar Traders*(supra). He invited attention to paragraph 20 of the said decision. However, it is clear from the facts of the said matter that the authority given to the witness was very specific and the word "proceed" was not found in it. Paragraph 8 of the said decision quoted the authority letter issued in favour of Shri Shashikant Savoikar, Branch Manager, to represent the Managing Director in the Court of Judicial Magistrate First Class, Civil Courts in Goa, to sign and execute documents such as complaints, plaints, affidavits, written statements, vakalatnama and depose on behalf of Bank and on behalf of the Managing Director in cases filed by the Bank and in cases filed against the Bank by any authority. In this context, this Court in the above decision observed that the Managing Director, as the Chief Executive, was not having any authority under the Multi State Co-operative Societies Act or under the bye-laws to file complaints, he certainly could not have given any authority to other person to file complaints. It further observed that the complainant, i.e. The Goa State Co-op Credit Society Ltd being a body corporate can act only by resolution passed by the Directors in its meetings. In that case there was no resolution passed by the said Bank in favour of its Managing Director authorising him to

appoint any person to prosecute the defaulters. Similarly, there was no resolution passed by the Bank in favour of Mr. Shashikant Savoikar or any other person authorising them to file complaints or to depose in support of it. Thus, the facts stand on its own feet in the said case which are distinguishable from the present matter. Therefore, the said decision is not helpful at all as tried to be projected by the respondent.

44. In the case of *Shri Ashok Pagui* (supra), again the facts are totally different. M/s. Agencia Real Canacona Pvt. Ltd. being a company was required to resolve in the Board of Directors meeting to grant any authority to any of the persons to file complaints. Instead of that, one of the Directors granted Power of Attorney to another person to file the complaints and to represent the company which has been rejected by this Court as found in paragraph 21. This decision also is not helpful as there was no resolution passed by the Board of Directors authorising anyone to represent the company.

45. In the case of *M/s. Alka Toraskar* (supra), though there was a resolution passed as found in paragraph 12, it only speaks that '*It was resolved to authorise Mr. Gaurish P. Shirodkar, Officer-in-Charge for Recovery, to attend any Court/ABN cases*

on behalf of our Society against defaulters and our loanee members'. There was no specific resolution or authority given to said Mr. Shirodkar to launch prosecution for and on behalf of Society in the said resolution. Thus the case of *M/s. Alka Toraskar* (supra), is not helpful to the respondent due to the wordings in the said resolution.

46. Learned counsel Shri Bhobe then placed reliance on the decision of *Chandraprabha* (supra), to buttress his arguments that in an appeal against acquittal, this Court will not interfere solely because a different view is possible which may arise on the basis of evidence. He also submitted that if two reasonable conclusions could be reached on the basis of evidence on record, the appellate Court should not disturb the findings of the trial Court. There is no dispute about such proposition laid down by the Apex Court as it is well settled by a catena of decisions. However, it is necessary to find out whether the view taken by the learned Additional Sessions Judge in both the matters with regard to the word "proceed", is a plausible view and the arguments which are advanced on behalf of the learned counsel for the appellants could be considered as another view. In order to understand this aspect, the observations in the impugned judgment need to be considered.

47. The learned Additional Sessions Judge at Margao in Criminal Appeal No.48/2012 (Datta Shambu Naik v/s. Quepem Urban Co-op Society Ltd.) in its judgment dated 21.10.2013 framed 3 points which are in paragraph 12. Point no.3 is whether the witness had authority to file complaint. While answering this point, the learned Court observed from paragraph 21 of the impugned judgment by quoting the contents of the resolution and then discussed/concluded in paragraph 23 and 24 that resolution does not confer power on said Surendra to file or initiate complaints. On that premise, it was held that the complaint was filed without any authority by said Surendra on behalf of the appellant. At this juncture, it is necessary to clear that the arguments advanced on behalf of the learned counsel for the appellant Mr. Nachinolkar is only restricted to the resolution dated 11.11.2009 and not with regard to the Power of Attorney specifically issued in favour of said Surendra. Therefore, in this impugned judgment, there is no discussion with regard to the word "proceed" and whether it only amounts to 'to proceed with pending cases'.

48. The impugned judgment in Criminal Appeal No.51 of 2013 (Nilkhant B. Velip v/s. Quepem Urban Co-op. Credit Society Ltd.), decided by learned Additional Sessions Judge,

Margao vide its judgment dated 17.06.2017, deals with same aspect but with more reasoning. While discussing point no.2 as to whether the complainant/witness was having authority to launch prosecution, the wordings in the resolution passed in favour of Satyawar Narayan Velip is discussed in paragraph 28 onwards and thereafter the word "proceed" is considered in paragraph no.29 as under:-

'29. Therefore, resolution did not give powers to Shri Satyawar Narayan Velip to file or initiate criminal cases, though it gives him power to proceed in all the cases and, as submitted by the learned Adv. S.M. Tendulkar, the word "proceed" presumes that there is already a proceeding filed which has to be proceeded with and does not include the word "file" or "initiate".

49. Considering the dictionary meaning as submitted by the learned counsel for the appellant, the word "proceed" means "to begin with course of action", "to go on to do something" or "to continue". Thus, the word "proceed" cannot be only interpreted as to continue with the proceedings already filed. It has to be interpreted as defined in the Black's Law Dictionary as "begin a course of action". If that is so, the observation of the learned Additional Sessions Judge in both the impugned judgments are contrary to the dictionary meaning of the word "proceed" which, in fact, means 'to begin with a course of action' and, therefore,

gives specific power to the said person to launch proceedings or to initiate and conduct legal action.

50. In sum and substance, therefore, observations found in the impugned judgments on the above aspect are necessarily to be considered as erroneous for the simple reason that it did not discuss the real and dictionary meaning of the word "proceed" which is found in the resolution dated 11.11.2009 and which actually means that the person was authorised to initiate or to begin a course of action or to launch prosecution for and on behalf of the Society.

51. Thus, when a resolution is passed by the Board of Directors authorising a person to proceed for and on behalf of a society, it specifically include to begin with proceedings or to launch and initiate legal action. In other words, it means, to file complaint for and on behalf of the society against third party.

52. Learned counsel Shri Bhobe submitted that PW1 admitted during his cross-examination that he had no power to file the complaint as spelt out from the resolution. He, therefore, submitted that once PW1 admitted that he had no power, the resolution cannot be interpreted otherwise. He then submitted that the Society then passed another resolution which was tried to

be introduced by way of re-examination of the witness showing therein that power to institute was specifically mentioned. Therefore, even the Society knew that in the earlier resolution there was no such power given to PW1 to launch prosecution.

53. Admittedly, a resolution is required to be passed by the Board of Directors and must be recorded in the Minutes. Therefore, once a document is required to be in writing and recorded accordingly, has to be read and not oral evidence given either in favour or against it, trying to interpret it contrary to the meaning of the document itself, unless it is claimed that such document or the contents therein were recorded, by playing fraud. Therefore, such arguments will not hold good and the contents of the resolution are required to be interpreted by giving its true meaning.

54. Having said so, the resolution passed in both the matters in favour of the complainant/witness of the Society are valid and specifically giving power to launch criminal action. Therefore, rejecting the complaint on this ground by the learned appellate Court is not at all justified. In the result, such observations need to be quashed and set aside.

Point no.1 is, therefore, answered in affirmative.

55. The learned Additional Sessions Judge Margao (Criminal Appeal No.51 of 2013) decided on 17.06.2017 observed that the Judicial Magistrate First Class had no territorial jurisdiction to decide the said complaint, which is challenged in the present appeal (Criminal Appeal No.21 of 2018).

56. The learned Additional Sessions Judge while deciding point no.1 framed in paragraph 18 of the impugned judgment, observed that loan was sanctioned from Shiroda Branch and only notice issued from Quepem Head-office after the cheque was dishonoured, will not give jurisdiction to Quepem Court. In this respect reliance is placed in the case of ***Harman Rathod***(supra).

57. The learned counsel Shri Nachinolkar forcefully submitted that when the said decision was passed by the learned Additional Sessions Judge on 17.06.2017, the Hon'ble Apex Court in the case of ***Dasharath Rathod*** (supra) discussed on earlier decisions including the case of ***K. Bhaskaran*** (supra), ***Harman Rathod*** (supra) alongwith other decisions. He submitted that the learned JMFC Quepem decided the matter holding that it had territorial jurisdiction, solely on the basis of observations of the Apex Court in the case of ***K. Bhaskaran*** (supra), which is found in paragraph no.13 and 14 of the said judgment in Criminal Case

No.38/NI/2009 decided on 21.02.2013. The judgment of ***K. Bhaskaran*** (supra) was a law laid down by the Apex Court at the relevant time and there was no illegality committed by the learned trial Court. He then submitted that the decision in the case of ***Harman*** (supra) was not cited before the learned Magistrate though it was decided by the Apex Court coordinate Bench on 12.12.2008. He submitted that placing reliance on the decision in the case of ***K. Bhaskaran*** (supra) of the coordinate Bench of the Apex Court cannot be considered as any illegality. He then submitted that Hon'ble 3 Judges Bench of the Apex Court in the case of ***Dashrath Rathod*** (supra) clarified all these aspects and observed that the matters which are pending for evidence shall be transferred to the jurisdiction Court. Only the matters of pre-summoning stages shall be returned to the complainant to be filed in the Court having territorial jurisdiction. He, therefore, submitted that instead of dismissing the said matter for want of territorial jurisdiction, the learned Sessions Judge ought to have remanded the matter to the Court having territorial jurisdiction, with direction to transfer it to the Court having jurisdiction. He submitted that, in the alternative, even that recourse could have been avoided by interpreting paragraph 22 of the observations in the case of ***Dashrath Rathod***(supra).

58. The submissions of the learned counsel Shri Nachinolkar are having force. When the learned Magistrate at Quepem decided the said criminal case No.38/NI/2009, it had discussed about the observations of the Apex Court in the case **K. Bhaskaran** to assume jurisdiction on the ground that notice was issued from Quepem. It is no doubt true that in the case of **Harman** (supra), the Hon'ble Apex Court has observed that jurisdiction of the Court for launching prosecution cannot be assumed from the place from which notice is issued though sending notice is one of the ingredients for maintaining complaint.

59. The Hon'ble Apex Court in the case of **Dashrath Rathod** (supra) discussed above 2 judgments of coordinate Bench alongwith other decisions and in order to clarify further, while partly affirming the observations in the case of **K. Bhaskaran**(supra) observed in paragraphs 19 to 22 as under:-

'19. In this analysis we hold that the place, situs or venue of judicial inquiry and trial of the offence must logically be restricted to where the drawee bank is located. The law should not be warped for commercial exigencies. As it is Section 138 of the NI Act has introduced a deeming fiction of culpability, even though, Section 420 is still available in case the payee finds it advantageous or convenient to proceed under that provision. An interpretation should not be

imparted to Section 138 which will render it as a device of harassment i.e. by sending notices from a place which has no causal connection with the transaction itself, and/or by presenting the cheque(s) at any of the banks where the payee may have an account. In our discernment, it is also now manifest that traders and businessmen have become reckless and incautious in extending credit where they would heretofore have been extremely hesitant, solely because of the availability of redress by way of criminal proceedings. It is always open to the creditor to insist that the cheques in question be made payable at a place of the creditor's convenience. Today's reality is that every Magistracy is inundated with prosecutions under Section 138 of the NI Act, so much so that the burden is becoming unbearable and detrimental to the disposal of other equally pressing litigation. We think that courts are not required to twist the law to give relief to incautious or impetuous persons; beyond Section 138 of the NI Act.'

'20. We feel compelled to reiterate our empathy with a payee who has been duped or deluded by a swindler into accepting a cheque as consideration for delivery of any of his property; or because of the receipt of a cheque has induced the payee to omit to do anything resulting in some damage to the payee. The relief introduced by Section 138 of the NI Act is in addition to the contemplations in IPC. It is still open to such a payee recipient of a dishonoured cheque to lodge a first information report with the police or file a complaint directly before the Magistrate concerned. If the payee succeeds in establishing that the inducement for accepting a cheque which subsequently bounced had occurred where he resides or ordinarily transacts

business, he will not have to suffer the travails of journeying to the place where the cheque has been dishonoured. All remedies under IPC and CrPC are available to such a payee if he chooses to pursue this course of action, rather than a complaint under Section 138 of the NI Act. And of course, he can always file a suit for recovery wherever the cause of action arises dependent on his choosing.'

'21. The interpretation of Section 138 of the NI Act which commends itself to us is that the offence contemplated therein stands committed on the dishonour of the cheque, and accordingly JMFC at the place where this occurs is ordinarily where the complaint must be filed, entertained and tried. The cognizance of the crime by JMFC at that place however, can be taken only when the concomitants or constituents contemplated by the section concatenate with each other. We clarify that the place of the issuance or delivery of the statutory notice or where the complainant chooses to present the cheque for encashment by his bank are not relevant for purposes of territorial jurisdiction of the complaints even though non-compliance therewith will inexorably lead to the dismissal of the complaint. It cannot be contested that considerable confusion prevails on the interpretation of Section 138 in particular and Chapter XVII in general of the NI Act. The vindication of this view is duly manifested by the decisions and conclusion arrived at by the High Courts even in the few cases that we shall decide by this judgment. We clarify that the complainant is statutorily bound to comply with Section 177, etc. of CrPC and therefore the place or situs where the Section 138 complaint is to be filed is not of his choosing. The territorial jurisdiction is

restricted to the court within whose local jurisdiction the offence was committed, which in the present context is where the cheque is dishonoured by the bank on which it is drawn.'

'22. We are quite alive to the magnitude of the impact that the present decision shall have to possibly lakhs of cases pending in various courts spanning across the country. One approach could be to declare that this judgment will have only prospective pertinence i.e. applicability to complaints that may be filed after this pronouncement. However, keeping in perspective the hardship that this will continue to bear on alleged respondent-accused who may have to travel long distances in conducting their defence, and also mindful of the legal implications of proceedings being permitted to continue in a court devoid of jurisdiction, this recourse in entirety does not commend itself to us. Consequent on considerable consideration we think it expedient to direct that only those cases where, post the summoning and appearance of the alleged accused, the recording of evidence has commenced as envisaged in Section 145(2) of the Negotiable Instruments Act, 1881, will proceeding continue at that place. To clarify, regardless of whether evidence has been led before the Magistrate at the pre-summoning stage, either by affidavit or by oral statement, the complaint will be maintainable only at the place where the cheque stands dishonoured. To obviate and eradicate any legal complications, the category of complaint cases where proceedings have gone to the stage of Section 145(2) or beyond shall be deemed to have been transferred by us from the court ordinarily possessing territorial jurisdiction, as now clarified, to the court where it is presently pending. All other complaints (obviously

including those where the respondent-accused has not been properly served) shall be returned to the complainant for filing in the proper court, in consonance with our exposition of the law. If such complaints are filed/refiled within thirty days of their return, they shall be deemed to have been filed within the time prescribed by law, unless the initial or prior filing was itself time-barred.'

60. Similarly, further observations in paragraph 58.1 to 58.7 and paragraph 59 are quoted below for ready reference:-

'58. To sum up:

58.1. An offence under Section 138 of the Negotiable Instruments Act, 1881 is committed no sooner a cheque drawn by the accused on an account being maintained by him in a bank for discharge of debt/liability is returned unpaid for insufficiency of funds or for the reason that the amount exceeds the arrangement made with the bank.

58.2. Cognizance of any such offence is however forbidden under Section 142 of the Act except upon a complaint in writing made by the payee or holder of the cheque in due course within a period of one month from the date the cause of action accrues to such payee or holder under clause (c) of proviso to Section 138.

58.3. The cause of action to file a complaint accrues to a complainant/payee/holder of a cheque in due course if

- (a) the dishonoured cheque is presented to the drawee bank within a period of six months from the date of its issue,*
- (b) if the complainant has demanded*

payment of cheque amount within thirty days of receipt of information by him from the bank regarding the dishonour of the cheque, and

(c) if the drawer has failed to pay the cheque amount within fifteen days of receipt of such notice.

58.4. The facts constituting cause of action do not constitute the ingredients of the offence under Section 138 of the Act.

58.5. The proviso to Section 138 simply postpones/defers institution of criminal proceedings and taking of cognizance by the court till such time cause of action in terms of clause (c) of the proviso accrues to the complainant.

58.6. Once the cause of action accrues to the complainant, the jurisdiction of the court to try the case will be determined by reference to the place where the cheque is dishonoured.

58.7. The general rule stipulated under Section 177 CrPC applies to cases under Section 138 of the Negotiable Instruments Act. Prosecution in such cases can, therefore, be launched against the drawer of the cheque only before the court within whose jurisdiction the dishonour takes place except in situations where the offence of dishonour of the cheque punishable under Section 138 is committed along with other offences in a single transaction within the meaning of Section 220(1) read with Section 184 of the Code of Criminal Procedure or is covered by the provisions of Section 182(1) read with Sections 184 and 220 thereof.'

'59. Before parting with this aspect of the matter, we need to remind ourselves that an avalanche of cases

involving dishonour of cheques has come upon the Magistracy of this country. The number of such cases as of October 2008 were estimated to be more than 38 lakhs by the Law Commission of India in its 213th Report. The result is that cases involving dishonour of cheque are in all major cities choking the criminal justice system at the Magistrate's level. Courts in the four metropolitan cities and other commercially important centres are particularly burdened as the filing of such cases is in very large numbers. More than five lakh such cases were pending in criminal courts in Delhi alone as of 1-6-2008. The position is no different in other cities where large number of complaints are filed under Section 138 not necessarily because the offence is committed in such cities but because multinational and other companies and commercial entities and agencies choose these places for filing the complaints for no better reason than the fact that notices demanding payment of cheque amounts were issued from such cities or the cheques were deposited for collection in their banks in those cities. Reliance is often placed on Bhaskaran case [K. Bhaskaran v. Sankaran Vaidhyan Balan, (1999) 7 SCC 510 : 1999 SCC (Cri) 1284] to justify institution of such cases far away from where the transaction forming basis of the dishonoured cheque had taken place. It is not uncommon to find complaints filed in different jurisdiction for cheques dishonoured in the same transaction and at the same place. This procedure is more often than not intended to use such oppressive litigation to achieve the collateral purpose of extracting money from the accused by denying him a fair opportunity to contest the claim by dragging him to a distant place. Bhaskaran case could never

have intended to give to the complainant/payee of the cheque such an advantage. Even so, experience has shown that the view taken in Bhaskaran case permitting prosecution at any one of the five different places indicated therein has failed not only to meet the approval of other Benches dealing with the question but also resulted in hardship, harassment and inconvenience to the accused persons. While anyone issuing a cheque is and ought to be made responsible if the same is dishonoured despite compliance with the provisions stipulated in the proviso, the court ought to avoid an interpretation that can be used as an instrument of oppression by one of the parties. The unilateral acts of a complainant in presenting a cheque at a place of his choice or issuing a notice for payment of the dishonoured amount cannot in our view arm the complainant with the power to choose the place of trial. Suffice it to say, that not only on the principles of interpretation of statutes but also the potential mischief which an erroneous interpretation can cause in terms of injustice and harassment to the accused the view taken in Bhaskaran case needs to be revisited as we have done in foregoing paragraphs.'

61. Cogent reading of the above observations of the Apex Court and more particularly in paragraph 22, it is clear that the approach adopted by the Hon'ble Apex Court is not to dismiss the matters on the point of territorial jurisdiction even though filed by observing the discussion in the case of ***K. Bhaskaran*** (supra), but to direct the Courts below to transfer those matters

to the Court having jurisdiction. In that, also, the Hon'ble Apex Court has adopted the approach by giving necessary directions that only those cases which are pending at the stage of pre-summoning shall only be returned to the complainant to be presented within 30 days to the jurisdictional Magistrate. The Hon'ble Apex Court has observed that the category of complaint cases where proceedings have gone to the stage of Section 145(2) of Negotiable Instrument Act or beyond shall be deemed to have been transferred to the Court having ordinarily territorial jurisdiction, from the Court where it is presently pending. All other complaints including those where the accused has not been properly served, shall be returned to the complainant for filing in proper Court. If such complaints are filed/refiled within 30 days of their return, they shall be deemed to have been filed within the time prescribed by law, unless the initial or prior filing was itself time-barred.

62. Thus, the proper course available in the present matter before the learned Additional Sessions Court was to quash and set aside the judgment passed by the learned Magistrate at Quepem for want of territorial jurisdiction and to remand the matter with directions that the matter stands transferred as observed by the Apex Court, to the jurisdictional Court at Ponda as the

transaction took place in Shiroda. Dismissing the said case for want of territorial jurisdiction, was, therefore, not proper as complaint was filed, entertained and decided on the basis of the law laid down by the Apex Court in the case of **K. Bhaskaran**(supra). It was expected that directions given by the Apex Court in the case of **Dashrath Rathod** (supra) and more specifically in paragraph no.22 could have been followed instead of directly non-suiting the complaint.

63. Having said so, the proper course is to quash and set aside the judgment passed by the learned Magistrate at Quepem in Criminal Case No.38/NI/2009 and to remand it to the said Court with directions to transfer the said case to the learned Magistrate having territorial jurisdiction, i.e. the Court at Ponda. The approach of the Court must be justice oriented. Considering the above observations, on both counts, the impugned judgment in Criminal Appeal No.51 of 2013 dated 17.06.2017 needs to be interfered with by quashing the same. The directions in the case of **Dashrath Rathod** (supra) needs to be followed by remanding the matter to the learned Magistrate at Quepem and directing the said Magistrate to transfer/forward the case papers through the Sessions Judge, to the Court at Ponda having territorial jurisdiction to decide such matters.

64. Accordingly, Criminal Appeal No.11 of 2015 also needs to be allowed by quashing and setting aside the judgment dated 21.10.2013 in Criminal Appeal No.48 of 2012 and by restoring the order passed by the learned Magistrate dated 27.03.2012 in Criminal Case No.103/NI/2010. Hence, the order:-

O R D E R

Criminal Appeal No.11 of 2015 stands allowed. The impugned judgment dated 21.10.2013 in Criminal Appeal No.48 of 2012 passed by the learned Additional Sessions Judge, Margao is hereby quashed and set aside. The judgment/order dated 27.03.2012 of the learned Magistrate at Quepem in Criminal Case No.103/NI/2010 is hereby restored. The accused in the above criminal case shall surrender before the learned Magistrate to undergo imprisonment, within a period 15 days from today. In case of failure on the part of the appellant to surrender within the above period, the learned Magistrate is directed to take recourse of law for implementing its order of conviction.

Criminal Appeal No.21 of 2018 stands partly allowed. Judgment dated 17.06.2017 arising out of Criminal Appeal No.51 of 2013 passed by the learned Additional Sessions Judge, Margao is hereby quashed and

set aside. Similarly, the judgment dated 21.02.2013 passed by the learned Magistrate at Quepem in Criminal Case No.38/NI/2009 is also quashed and set aside. However, the said case is restored and remanded to the learned Magistrate who shall forward/transfer the said matter through the learned Sessions Court, Margao to the jurisdictional Court i.e. Ponda Court, immediately, by intimating the concerned parties. On receipt of such case papers by the Ponda Court, endeavour has to be made to dispose of such case on the basis of evidence on record, as early as possible and, in any event, within a period of 3 months from the date of appearance of the parties.

65. Parties to bear their own costs.

BHARAT P. DESHPANDE, J.

MARIA SUZANA REBELLO Digitally signed by MARIA SUZANA REBELLO
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