

Andreza

**IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL MISC. APPLICATION NO. 67 OF 2021
IN
CRIMINAL APPEAL NO. 387 OF 2021 (FILING)**

VPK Urban Co-operative Credit Society Ltd., ... Applicant
Rep. By Pundlik Rama Palyekar

Versus

Wilson Bernado Fernandes ...Respondent

Mr. Jatin Ramaiya, Advocate for the Applicant.

**CORAM: C. V. BHADANG, J
DATED: 21st April 2022**

P.C.

1. This is an application for leave to appeal against acquittal.
2. The applicant had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881, against the respondent, to whom the applicant had granted a loan which was repayable in instalments. The learned Magistrate by Judgment and Order dated 26.02.2021, has acquitted the respondent of the said offence.
3. I have heard the learned Counsel appearing for the applicant. None appears for the respondent, though served.
4. A perusal of the impugned Judgment shows that the learned Magistrate has gone into the calculations/computation of the amount which was payable as on the date of the subject cheque and has found that as on 13.04.2018, the respondent owed an amount of ₹8,02,768/- to the Applicant. It is in these circumstances that the Magistrate has

held that the amount of cheque exceeds the liability of the respondent. On this reason, the respondent has been acquitted.

5. The learned Counsel for the applicant pointed out that this was not even the defence raised as the only defence of the respondent was that he was not at all liable to pay anything. Learned Counsel for the applicant has submitted that the Magistrate could not on his own count had gone into the exercise of making computation in order to find that the cheque was in excess of the liability as on the date of the cheque.

6. Considering the overall circumstances, I find that a case for grant of leave is made out. In the result, the Criminal Application stands allowed as prayed.

7. Let the Criminal Appeal be registered, which shall be treated as admitted.

C. V. BHADANG, J

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