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IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL MISC. APPLICATION NO.66 OF 2021
IN
CRIMINAL APPEAL NO. 607 OF 2021(F)

VPK URBAN CO-OPERATIVE CREDIT SOCIETY LTD., REP. BY PUNDALIK RAMA PALYEKAR ...Applicant

VS

KALPANA PREMANAND CHARI ...Respondent

Mr. J. Ramaiya, Advocate for the applicant.
Mr. A. Bhobe, Advocate for the respondent.

CORAM: MANISH PITALE, J.
DATED: 3rd March, 2022.

P.C.:

- 1.** This is an application seeking leave to appeal against judgment and order dated 12.3.2021 passed by the Court of Judicial Magistrate, First Class at Margao, whereby the Magistrate has acquitted the respondent for offence punishable under Section 138 of the Negotiable Instruments Act, 1881.
- 2.** Notice was issued in this application and the respondent has appeared through counsel.
- 3.** Heard learned Counsel for the rival parties.
- 4.** A perusal of the judgment and order passed by the Magistrate shows that the respondent has been acquitted, firstly, for the reason that the notice issued by the applicant(original complainant) was not proved to have been properly served upon the respondent and

secondly that the applicant failed to prove that the cheque in question was actually handed over to the complainant by the respondent.

5. The case of the applicant is that respondent no.1 handed over the cheque as a surety in respect of a loan advanced to one Irfan. But, this was not believed and a doubt sought to be raised on behalf of the respondent that the cheque was a blank cheque submitted in the context of another transaction pertaining to personal loan to the respondent herself, was accepted by the Magistrate.

6. This Court has perused the material on record and upon considering the judgment and order passed by the Magistrate, it is found that on both counts, the case of the complainant prima facie could not have been thrown out for the reason that the true effect of the presumption that arises in such cases under Sections 118 and 139 of the aforesaid Act was not properly taken into consideration by the Magistrate. As to whether the respondent successfully rebutted such presumption ought to have been examined in greater detail by the Magistrate.

7. In view of the above, this Court finds that a case is made out for granting leave to file an appeal. Accordingly, the application is allowed and the applicant is granted leave to appeal in the present case.

8. Application stands disposed of.

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9. In view of the fact that this Court has found substance in the contentions raised on behalf of the appellant while allowing the application seeking leave to appeal, the present appeal shall be registered.

10. Having heard the learned Counsel for the rival parties, It is found that arguable questions arise for consideration in the present appeal.

11. Hence, Admit.

12. Call for records and proceedings.

13. Mr. A. D. Bhobe, learned Counsel waives notice on behalf of the respondents.

14. The respondent shall furnish bail bonds before the Magistrate in terms of Section 390 of Cr.P.C.

MANISH PITALE, J.