Niti

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO.33 OF 2016

The Goa State Cooperative Bank Ltd.,
through its Branch Manager,
Mr Ramakant J. Parab,
of Mapusa Market Branch,
Mapusa, Bardez, Goa.
Presently through Mr S. V. Lotlikar,
Managing Director (I/C),
Having office at Sahakar Sankul,
Patto, Panaji, Goa. ...Appellant

Versus

1. Shri Ashok Mandrekar
Major of age,
Proprietor of M/s. Ashok Enterprises,
Residing at House No.259,
Nadorawadi, P.O. Colvale,
Bardez, Goa.

2. The State of Goa,
Through Public Prosecutor
High Court, Panaji-Goa. ... Respondents

Mr Rama Rivankar, Advocate for the Appellant.
Mr Joaquim Godinho, Advocate for Respondent No.1.

CORAM : ASHISH S. CHAVAN, J.

DATE : 10th OCTOBER, 2025

JUDGMENT :

1. The present appeal assails a judgment dated 30.05.2015, passed by learned JMFC, Mapusa Goa, acquitting Respondent No.1 of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (NI Act, for short). The Appellant herein is the original complainant – Bank.

2. The case of the Appellant - Bank can be summarised as under:

(a) The Respondent No.1 had availed a loan of Rs.15,00,000/- (Rupees Fifteen Lakhs only) from the Appellant–Bank, after complying with all necessary formalities. The Respondent No.1 defaulted in making payment towards the outstanding loan amount.

(b) On 09.05.2006, the Respondent No.1 issued a cheque drawn on Indusind Bank, Panaji Branch, in favour of the Appellant-Bank for an amount of Rs.17,85,589/- (Rupees Seventeen Lakhs Eighty Five Thousand Five Hundred and Eighty Nine only) towards the repayment of the loan amount.

(c) On 03.07.2006, the Appellant-Bank deposited the said cheque of Mapusa Branch for clearance. However, Indusind Bank returned the said cheque unpaid with a remark "account closed".

(d) On 15.07.2006, the Appellant-Bank issued a statutory legal notice calling upon the Respondent No.1 to make the payment of the sum of Rs.17,85,589/- (Rupees Seventeen Lakhs Eighty Five Thousand Five Hundred and Eighty Nine only).

(e) The Respondent No.1, despite receiving the said notice, failed to make payment of the cheque amount.

(f) On 19.08.2006, the Appellant-Bank was constrained to file a complaint under Section 138 r/w 142 of NI Act before the learned JMFC, Mapusa.

(g) The Appellant-Bank has examined four witnesses during the trial.

(h) That no evidence was led by the Respondent No.1 in rebuttal.

(i) On 30.05.2015, JMFC, Mapusa, acquitted the Respondent No.1 of all charges of the offence under Section 138 of the NI Act.

(j) Aggrieved by this acquittal, the Appellant has filed the present appeal against acquittal.

3. By an order of this Court dated 14.06.2016, the Appellant-Bank was granted leave to file an appeal and the appeal was admitted.

4. Although there are several grounds raised by the Appellant-Bank in the present appeal, the principal challenge to the judgment rests on whether or not the de facto complainant representing the Appellant-Bank was authorised to do so in law.

5. The impugned judgment records a finding that the de facto complainant representing the Appellant–Bank was not duly authorised to represent it, since the letter of authority dated 11.07.2006 was not produced or exhibited before the Trial Court. It further records that even assuming that it was executed and the same could be read in evidence, it was not backed by a resolution of the Board of Directors or any other material to show that the Managing Director was empowered to issue such letter of authority and hence the complaint under the NI Act was not filed either by the payee or his duly authorised representative as envisaged in Section 142 of the NI Act, hence the complaint is bound to fall on this ground alone. The impugned judgment has not gone into any other arguments and/or defences on the merits of the matter.

6. Since the impugned judgment records a finding limited only to the authorisation of the de facto complainant representing the Appellant–Bank before the Trial Court and the Appellant-Bank also restricts its challenge in the present Appeal only to this aspect, the question that falls for consideration is extremely narrow in its conspectus. The question is whether or not the individual representing the Appellant–Bank before the Trial Court was duly authorised or not by the Appellant–Bank.

7. Heard Mr Rama Rivankar, the learned counsel for the Appellant-Bank and Mr. J. Godinho, the learned counsel for Respondent No.1. Perused the records and the impugned judgment.

8. Since the issue revolves around the authorisation of the Appellant–Bank, it is pertinent to note that there are two affidavits of evidence filed on behalf of the Appellant–Bank as provided for by Section 145 of the NI Act.

The first affidavit is affirmed on 22.12.2008, filed on behalf of the Appellant–Bank through its authorised representative, one Satyawan Naik. It is accompanied by a letter of authority dated 16.06.2009 issued by the Managing Director (In-charge) of the Appellant–Bank on the letterhead of the Appellant–Bank.

The second affidavit is affirmed on 24.04.2012, filed on behalf of the Appellant-Bank through its authorised representative, one Mrs. Lingata Vernekar and accompanied by a letter of authority dated 24.04.2012 issued by the Managing Director (In-charge) of the Appellant–Bank on the letterhead of the Appellant–Bank.

Interestingly, there is a third letter of authority dated 08.11.2006 issued by the Managing Director (In-charge) of the Appellant–Bank on the letterhead of the Appellant–Bank in favour of one Ranganath Pandurang Pirankar. All three authority letters bear Exhibit numbers.

9. In the impugned judgment, a controversy is raised as to whether the original letter of authority was either produced or exhibited. However, it is unnecessary to dilate upon this issue since the question of law that arises before me is, assuming that all three letters of authority were properly exhibited and duly marked as exhibits, even then would these letters of authority confer authorisation as envisaged by law on the representatives of the Appellant–Bank.

10. Since the aforesaid letters of authority are identical in all respects, their legal effect can be considered cumulatively. It is not disputed by the Appellant–Bank that the letters of authority were not backed by any Board resolution or any other document that authorises the Managing Director of the Appellant–Bank to issue such a letter of authority in favour of the representatives. In other words, the Appellant–Bank admits that, save and except for the letters of authority referred hereinabove, there is no other document placed on record by the Appellant–Bank to show that its Representative/s were duly authorised by it before the learned Trial Court.

11. An identical issue came up for consideration before this Court in the matter of ***Ashok Bampto Pagui V/s. Agencia Real Canacona Pvt. Ltd.***[1]**,** where it was observed in para 21 thus:

> *"21. A Director, as an individual Director, has no power to act on behalf of the company. He is only one of a body of Directors called the Board of Directors and alone he has no power except such as may be delegated to him by the Board of Directors or given to him by the articles of association of a company. In the case at hand, the complaint was filed by one of the Directors and as already stated by a Director who had initially complained to the Police that the subject cheque was forged by the accused, and, without any resolution of the company or any authorization from the Board of Directors. The view held by me is consistent with the views expressed in the decisions referred to hereinabove, namely, those of the Madras High Court in Ruby Leather Exports vs. K. Venu*[2]*, Andhra Pradesh High Court and Delhi High Court which is now*

[1] 2007 (6) MhLJ 94
[2] 1995 (82) Company Cases 776 (Madras)

confirmed by the view held by the Apex Court, in Dale and Carrington Invt. (P) Ltd. and another vs. P. K. Prathapan and others[3] *and therefore I hold that the complaint in this case was not filed by the company as required under Clause (a) of section 142 of the Act and on such a complaint no process could have been issued much less a conviction imposed. The said Shri Prashant Shirodkar could not have filed the same merely in his capacity of a Director. He had to file the same only with authorization from the Board of Directors. As already stated, prima facie, it appears that such authorization was issued by the complainant, company in favour of Shri Pednekar as can be seen from the copy of power of attorney produced."*

12. The same view was reiterated by this Court in the matter of ***Mrs Alka Toraskar V/s. The Vaishya Urban Co-op. Credit Society Ltd. & Anr.***[4].

13. This Court, while dealing with an identical issue in ***The Goa State Co-op. Bank Ltd. V/s. M/s. Kurtarkar Traders***[5] has, after referring to both the aforesaid judgments and noting that the Appellant therein was a multistate cooperative society, proceeded to observe in para 20 as under:

"20. Although the complainant might have had good cases on merits, the complainant's cases were bound to fail in the absence of the proper authority having been given to the said two officers of the complainant, the complainant being a Multi State Co-operative Society. Going back to the Black's Law Dictionary again, expression 'sue' means to commence or to continue legal proceedings for recovery of a right, and, it does not refer to any legal proceedings simpliciter so as to say that legal proceedings

[3] (2005) 1 SCC 212
[4] 2006 SCC OnLine Bom 1323
[5] 2010 3 MhLJ 297

could also means a prosecution. It is common knowledge that 'to sue' generally means to initiate a civil action in law and this view is in conformity with what the Apex Court has stated in the case of Province of Bombay (supra) as well as Strand's Judicial Dictionary and K.J. Ayyar's Judicial Dictionary, as well. It is also to be noted that one does not know whether Chief Executive Officers who issued letters of authority were regularly appointed by the bank and who have been referred to as acting Managing Director/s. That apart in terms of Section 52 of the Act and bye laws framed thereunder the Managing Director as Chief Executive could have only appointed persons to sue or to be sued on behalf of the complainant i.e. to initiate civil action and not to prosecute anyone by filing complaint/so If the Managing Director as Chief Executive had no authority under the Act, or the bye laws framed thereunder to file complaints, he certainly could not have given any authority to file the complaints. In other words, he could not give to any officer or person anything which he himself did not have. The contention that the authority letters authorized to file complaints has no meaning. The complainant as a body corporate can act only by resolutions passed by the directors at its meeting. There was no resolution passed by the complainant in favour of its Managing Director authorising him to appoint any person to prosecute the defaulters, whose cheques, bounced. There was no resolution passed by the Bank in favour of the said Sawaikar and the said Kavlekar, authorising the former to file complaints and/ or depose in support of the same. Power to lodge complaints in their favour could have been given only by a resolution of the Board of Directors. There was none given and none was produced. It was clearly held in Ashok B. Pagui (supra) that a complaint even by a director of a company was not maintainable without there being a resolution by the Board of Directors. Section 52(i) of the said Act only authgrizes a Managing Director to sue or be sued i.e. to initiate or defend a civil action only. The cases at hand were clearly covered by the decisions of this Court in the case of Alka Toraskar [2006(6) ALL MR 397], Ashok B. Pagui (2007 ALL MR (Cri) 2238); Chico Ursula D'Souza [2009(1) ALL MR 290], as well as Om Shakti Schedule Castes (supra). The view held by the

Courts below that both the said witnesses were sufficiently not authorized by the complainant either to lodge complaint/s and/or depose on behalf of the complainant cannot be faulted."

14. The proposition of law that emerges from the aforesaid judgments, in essence, is that a multistate cooperative society is also a body corporate and it can act only through resolutions passed by its Board of Directors. In the absence of any Board resolution, merely on the basis of a letter of authority signed by the Managing Director, as in the present case, no authority can be conferred on the representative of the Multi-State Cooperative Society.

15. Section 52 of the Multistate Cooperative Societies Act, 2002, provides that the Chief Executive is empowered to appoint a person to sue or be sued on behalf of the multistate cooperative society. This does not *ipso facto* authorise a Managing Director to authorise any person to initiate criminal prosecution. In any case, the complainant, being a body corporate, could have acted only on the basis of the resolutions passed by it. Since there was no Board resolution passed by the Appellant–Bank in favour of its Managing Director to prosecute the Respondent (accused), Section 52 of the Multistate Cooperative Societies Act cannot be pressed in aid of the Appellant–Bank.

16. In the wake of the aforesaid facts and the position of law, the letters of authority relied upon by the Appellant–Bank bereft of any Board resolution or any other document to authorise the Managing Director to appoint/authorise a representative on behalf of the

Appellant–Bank cannot be said to fulfil the legal requirements as set out in Section 142 of the NI Act.

The impugned judgment, therefore, cannot be faulted with and hence the present appeal deserves to be dismissed.

The Rule is accordingly discharged.

ASHISH S. CHAVAN, J.