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IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO.49 OF 2015.

Mr Reggie Fernandes, 48 years of age,
married, Business resident of H. No. 106,
Craucha Wado, Siolim, Bardez Goa. Applicant.

Vs

1. Miss Shanta C. Kolvalkar, Aged 45 years,
Spinster, B-6, villa Verdes, Behind Sagar
Hotel, Alto Porvorim, Teen Building,
Porvorim Bardez Goa.
2. **S T A T E**
Through Public Prosecutor. Respondents.

Mr S. Shet, Advocate for the Applicant.

CORAM: BHARAT P. DESHPANDE, J

DATED: 23rd January, 2024

ORAL JUDGMENT.:

1. Heard Mr Shet, learned Counsel appearing for the applicant.
2. Present revision is filed challenging concurrent findings of both the Courts with regards to offence under Section 138 of the Negotiable Instruments Act, 1881("the Act" for short).
3. Learned Counsel Mr Shet would submit that findings of the Courts below are perverse and are contrary to the law as well as evidence on record. He submits that complainant failed to prove that

amount mentioned in the cheque was in fact recoverable legally and that there was no such liability on the applicant. He submits that evidence clearly goes to show that presumption under Section 139 of the Act stands rebutted. However, both the Courts below failed to consider and arrived at incorrect findings.

4. Respondent/complainant filed proceedings under Section 138 of the Act. Basically it was a case of the complainant that the accused is his brother's friend and who used to visit their house. Somewhere in the month of May 2006 accused requested for a friendly loan since he was in financial crisis. Accused promised to repay the loan within short time. Accordingly, the complainant gave a friendly loan of Rs.11,15,000/- to the accused in the month of May 2006. Accused promised to repay the said loan in short time.

5. Complainant further disclosed that in order to discharge such liability, accused issued two cheques dated 5.11.2007 for Rs.5,00,000/- and dated 22.4.2008 for Rs. 6,15,000/- drawn on ICICI Bank Mapusa Branch. Present matter is in respect of cheque for Rs.6,15,000/-. On presentation, both the cheques were returned unpaid with an endorsement funds insufficient. After issuing notice to the accused, complaint was filed since accused failed to comply with the conditions of the notice. Learned Magistrate after issuing summons to the accused and explaining substance of accusation, allowed the complainant to adduce evidence and accordingly,

observed that the accused committed offence under Section 138 of the Negotiable Instruments Act. Accordingly, sentence was pronounced for simple imprisonment for two months and to pay compensation of Rs.6,50,000/- within a period of two months.

6. An appeal was filed by applicant/accused before learned Sessions Court. Vide judgment and order dated 13.5.2015 learned First Appellate Court confirmed the findings of the learned Magistrate and dismissed the appeal.

7. Contentions raised in the present revision is that observations of the learned Magistrate and the First Appellate Court are contrary to the law and evidence on record. However, on perusal of the record as well as the fact that there is clear admission on the part of the accused that cheque in question bears his signature, presumption under Section 139 of the Act stands attracted.

8. Once such presumption is considered in favour of the complainant, as held by the Apex Court in the case of ***Rangappa Vs. Mohan, AIR 2010 SC 1898***, onus shifts on the accused to rebut such presumption.

9. Learned Magistrate as well as First Appellate Court concluded that accused/applicant failed to rebut such presumption. Both these authorities also found that except giving suggestions, there is no other material to consider about rebuttal of such presumption in

favour of the accused. Courts below also found that there is no probable defence raised or created by the accused during the proceedings.

10. These findings are based on the material as well as evidence of the parties. Admittedly while considering a revision against concurrent findings of the Courts below, scope of this Court is limited. The question as to whether the impugned order is against the settled proposition of law or perverse could be considered while entertaining revision application.

11. Material placed before this Court as well as one found in the record and proceedings of the trial Court, one thing is clear that cheque was admittedly signed by the accused. It was presented within time. Bank informed the complainant that the cheque is returned unpaid for the reason funds in sufficient. Complainant issued notice to the accused demanding amount mentioned in the cheque. Said notice was returned unclaimed. Address mentioned in the notice is registered address of the accused. Thus, offence under Section 138 of the Act stands completed on expiry of 15 days from the date of receipt of the notice by the accused.

12. Impugned orders passed by the Courts below are therefore justified and no interference is warranted in the revisional jurisdiction.

13. Revision Application therefore fails and stands disposed of.

Proceedings closed.

BHARAT P. DESHPANDE, J.

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