

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 59 OF 2015

IN

STAMP NUMBER MAIN NO. 106 OF 2015

KIRAN D. SAMANT, PROPRIETOR OF
LAXMI ENTERPRISES.

... Applicant

Versus

MR. PANDURANG BHOSLE AND ANR.,

... Respondents

Mr. S. Shet, Advocate for the Applicant.

Mr. M. Teles, Advocate for the Respondent.

Coram:- C. V. BHADANG, J.

Date:- 5th August, 2015

P.C.:

By this application, the applicant/complainant is challenging the judgment and order dated 19/11/2014 passed by the learned Additional Sessions Judge at Mapusa in Criminal Appeal No.67/2014. By the impugned judgment, the learned Sessions Judge has allowed the appeal filed by the respondent no.1 thereby setting aside the conviction of the respondent no.1 for the offence punishable under section 138 of the Negotiable Instruments Act.

2. According to the applicant, the first respondent had issued a cheque as proprietor of "Plumcare", which is a Plumbing and Sanitaryware Shop, situated at Fonseca Arcade, Near Court,

Ponda-Goa. The learned Magistrate had found that the cheque was issued towards discharge of a legally enforceable debt. In so far as the statutory notice is concerned, it was found that the endorsement on the envelope about refusal by the first respondent, amounted to good service. In the face of such a finding the first respondent, came to be convicted.

3. In appeal it was contended before the learned Sessions Judge that the subject cheque was not proved to have been issued in discharge of a legally enforceable debt and even the statutory notice was not served on the first respondent, which is a sine qua non for taking cognizance of the offence under section 138 of the Act. The learned Sessions Judge has held that the subject cheque was not issued towards legally enforceable debt/liability. In so far as the service of notice is concerned, it was found that the envelope containing the notice was addressed to Plumcare, (Plumbing and Sanitary Shop Fonseca Arcade, Near Court, Ponda-Goa). The learned Sessions Judge after considering the evidence, found in para 34 of the judgment that the notice was not addressed to the first respondent. It was also found that the applicant had admitted in his cross examination that the first respondent had already shifted his business premises and thus the address given on the envelope was not the business address of Plumcare.

3. The learned Sessions Judge in para 33 of the judgment has also

found that the first respondent had already sold the shop No.CG-7 in the year 2008 and in support thereof had produced a copy of the sale deed dated 2/6/2008. It was thus found that the endorsement of refusal of notice cannot amount to good service. In so far as the issue of the cheque having been issued towards discharge of the legally enforceable debt is concerned, the learned Sessions Judge has found that the evidence of the applicant on the point was inconsistent. Thus the presumption available to the applicant stood rebutted.

4. On hearing the learned counsel for the parties and on perusal of the record and the impugned judgment passed by the learned Sessions Judge, I do not find that any case for grant of leave is made out. The view taken by the learned Sessions Judge based on the oral and documentary evidence on record is a plausible view. I have also perused the record of the criminal case no.459/2009/1 and the envelope which indeed is addressed to Plumcare,(Plumbing and Sanitary Shop Fonseca Arcade, Near Court, Ponda-Goa) and not personally to the first respondent. It has also come on record that the first respondent had already shifted his business from the said address. If that be so, no exception can be taken to the finding recorded by the learned Sessions Judge that there was no proper service of the notice which was one of the requirements to be satisfied for taking cognizance of the offence under section 138 of the N.I. Act. In the result, no case for grant of special leave is made out.

The criminal miscellaneous application and the consequent criminal appeal/stamp no. 106/2015 are hereby dismissed.

C. V. BHADANG, J.

ap/-