

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL MISC. APPLICATION NO. 37 OF 2015
IN
STAMP NUMBER MAIN NO. 317 OF 2015**

MR. MAHESH REVANKAR. ... Applicant
Versus
MR. KALIDAS KASHINATH RAIKAR AND
ANR., ... Respondents

Shri U.R. Timble, Advocate for the Applicant.

Shri Joaquim Godinho, Advocate for the Respondent No. 1.

CORAM:- C. V. BHADANG, J.

DATE : 26th JUNE, 2015

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Heard the learned Counsel for the parties.

2. The first respondent was prosecuted for the offence punishable under Section 138 of the Negotiable Instruments Act, on a complaint filed by the applicant. By a judgment and order dated 30.12.2014, the first respondent came to be acquitted, hence, this application for leave to appeal.

3. It appears from the perusal of the impugned judgment that the learned Magistrate has answered the point no. 1 as to whether the cheque was issued towards a legally enforceable debt of liability, in affirmative and in favour of the applicant. The complaint is dismissed on the ground that the subject cheque was drawn in favour of M/s Zenith Constructions, which is a proprietary firm, of which the applicant is the proprietor. However, the complaint was lodged by the applicant in his personal capacity and not in the capacity as proprietor of the firm. The learned Magistrate thus, came to the conclusion that the applicant cannot be said to be a payee or holder in due course.

4. The learned Counsel for the applicant has placed reliance on a decision of the Hon'ble Apex Court, in the case of M/s Shankar Finance and Investments Vs. State of Andhra Pradesh and Others, reported in 2008(8) SCC 536, in order to submit that the applicant having been described as a proprietor in the body of the complaint, would be a sufficient compliance and the learned Magistrate could not have taken a hyper technical view in the matter.

5. Having regard to the submissions made, the application for leave to appeal against acquittal is, allowed. Action under Section 390 of the Code of Criminal Procedure to follow.

6. It is submitted by the learned Counsel for the first respondent that the first respondent is ready and willing to pay the amount of the subject cheque alongwith interest.

7. In view of the statement made on behalf of the first respondent, it is for the parties to explore the possibility of any amicable settlement. If, the parties arrive at a settlement, the same shall be brought to the notice of the Court.

C. V. BHADANG, J.

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