IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 140 OF 2014
AND
STAMP NUMBER MAIN NO. 642 OF 2014

M/s. M. C. Shah (HUF),
Proprietor Shri. Manukant
Chhanalal Shah, aged 59 years,
business, represented by
his power of attorney holder
Smt. Saruja P. Naik,
aged 39 years, resident of Flat No.G-2,
Bermar Apartments, Santa Cruz,
Ponda, Goa. … **Applicant/appellant**

Versus

Dhrupad Textiles
Proprietor, Mr. Ajay Ambalal Patel,
Major in age, resident of 11/441,
Ramji ni Pol, Pratharnik School ni Street,
Nanavat, Surat, Gujarar … **Respondent**

Mr. De Souza Zeller, Advocate for the applicant/appellant.
Mr. Gaurish Agni, Advocate for the respondent.

Coram : C. V. BHADANG, J.

Date : 10th July, 2015.

ORAL ORDER :

By this application the applicant / complainant is seeking leave to appeal against acquittal of the respondent from the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

2] The brief facts are that the applicant / complainant is a Hindu Undivided Family. Admittedly, the applicant is in money lending business and is having a money lending licence in Gujarat. According to the applicant, it has made an application for obtaining a similar licence in Goa, and that application is pending. The applicant approached the learned Magistrate with a case that the applicant had advanced an amount of Rs.2,00,000/- to the respondent at his residence at Ponda, Goa and towards repayment of the same the respondent had issued a cheque dated 23 November 2010, which was dishonoured on presentation for encashment. During the trial before the Magistrate Mr. Manukant Shah was examined as PW-1. The defence of the respondent as elicited from the cross-examination and also the statement under Section 313 of Criminal Procedure Code, appears to be that the cheque was issued sometime in the year 2006, as a security. It was also claimed that the date of the cheque was changed and there was no re-validation effected by the respondent. It was further claimed that the amount taken was already repaid in the year 2006 itself, but the applicant did not return the cheque. It was contended that the applicant had misused the cheque.

3] The learned Magistrate on the basis of the cross-examination of PW-1 found that the defence of the respondent is probabilised. It was found that although the applicant came with a case that it was a friendly loan, during the cross-examination PW-1 admitted that the amount was advanced with interest at the rate of 15% per annum if the accused paid regularly, and in default of such payment, with a further 2% as penal interest. On the basis of this admission the learned Magistrate has found that it was not a case of a friendly loan. It has further been found that although the PW-1 had admitted that the respondent had executed an agreement, when the amount was advanced in the month of July 2004, the said agreement is not produced. The learned Magistrate found that when it was the specific defence of the respondent that the amount was advanced in the year 2006, in order to negate the said defence, it was necessary for the applicant to produce the said agreement. It further appears that although the applicant which is a Hindu Undivided Family was maintaining accounts and paying income tax, none of these documents were produced, on account of which an adverse inference could be legitimately drawn. It may be further significant to note that the applicant as well as the respondent are from Surat, Gujarat. The learned Magistrate has found it improbable that the respondent will come all the way to Goa for seeking the friendly loan as claimed by the applicant.

4] A bare perusal of the subject cheque shows that there is overwriting about the dates. The cheque mentions three dates namely

31 March 2006, 12 July 2006 and lastly 23 November 2010. The first two dates are scored out. This aspect has also been considered by the learned Magistrate.

5] It is submitted by the learned counsel for the applicant that once the respondent has admitted that the amount was taken, he could not have set up a defence based on the Money Lending Act or about the cheque being issued by way of security. I do not find that the submission can be accepted. In the first place when admittedly the applicant is not having a money lending licence in Goa, the applicant could not have advanced the amount on interest. Certainly, the transaction itself would be hit by the provisions contained in the Money Lending Laws existing in the State. It is obvious that there cannot be any estoppel against Law.

6] I have carefully gone through the impugned judgment. The learned Magistrate has rightly come to the conclusion, that the applicant has failed to establish that the cheque was issued for a legally enforceable debt or liability. In view of the limited scope of challenge available in an appeal against acquittal, unless and until the view taken by the Magistrate is either found to be perverse or an impossible view, no interference is called for. In the result, no case for grant of leave to appeal against acquittal is made out.

7] The criminal application as well as Stamp (Main) No.642 of 2014, are hereby rejected, with no order as to costs.

C. V. BHADANG, J.

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