

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 291 OF 2014

IN

STAMP NUMBER MAIN NO. 2696 OF 2014

MR. CHATER S. JAIN.

... Applicant

Versus

MR. B. ABDUL KADAR.

... Respondent

Shri Vivek Rodrigues, Advocate for the Applicant.
Shri R.G. Ramani, Advocate for the Respondent.

Coram:- C. V. BHADANG, J.

Date:- 22nd July, 2015

P.C:

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

2. The case set up by the applicant/complainant, before the learned Magistrate was that the parties were knowing each other and the respondent-accused had agreed to purchase the shares of a Company, by name Focus Construction and Contracting Company Pvt. Ltd., for a consideration of Rs.3,50,000/-. The subject cheque was for Rs.50,000/-, out of the total consideration. It appears that the said Company was possessing Class-II contracting license with the P.W.D. The cheque, eventually got dishonoured, which led to filing of the complaint.

3. The defence of the complainant, as elicited from the reply (Exhibit-34), to the notice, was that there was a proposal by the complainant, offering the respondent, a share holding in the Company and the consideration agreed was Rs.50,000/- and not Rs.3,50,000/-, as claimed. It subsequently transpired that the Company was not holding valid Class-II registration with the P.W.D. In that event, the deal did not get through. The complainant did not return the cheque and the same was misused.

4. The learned Magistrate in paragraph 16 of the judgment has referred to the evidence of PW-2, Mr. Abel Santan Vaz, examined on behalf of the applicant, in which PW-2, Mr. Vaz has stated that all the documents/files of the Focus Company, including registration and license papers, agreement of sale, share certificates, share transfer papers duly signed by the applicant, share certificate book with relevant stamps and round seal, were handed over to the respondent. PW-2, Mr. Vaz had further claimed that the list of such documents was prepared and the respondent had signed the same having acknowledged the receipt of these documents. The learned Magistrate has found that the said list was however not produced. The learned Magistrate has further found that although PW-2, Mr. Vaz had admitted that the certified copies of these documents were available with the Registrar of Companies, Panaji, there was no attempt made to produce these documents. The learned Magistrate found that in such circumstances, adverse

inference needs to be drawn against the applicant.

5. It is submitted by Shri Rodrgiues, the learned Counsel for the applicant that there was an earlier round of litigation. This Court in Criminal Appeal No. 23/2011, by an order dated 01.04.2014 had remanded the complaint. Thereafter, the impugned order of acquittal was passed. It is submitted that the applicant, has lost ownership of the shares and has also not received the amount of consideration. It is submitted that the learned Magistrate was in error in holding that the subject cheque was not issued towards a legally enforceable debt or liability. It is submitted that once, the signature is admitted, a presumption would arise in favour of the applicant, which is not rebutted.

6. On the contrary, it is submitted by Shri Ramani, the learned Counsel for the respondent, that the shares are not transferred in the name of the respondent. It is pointed out that in fact, it is the defence, that when the Company was not holding a valid Class-II registration, the deal did not materialize. He specifically submitted that there is no question of the respondent claiming ownership of the shares. It is submitted that in view of the evidence of PW-2, Mr. Vaz and other evidence on record, the learned Magistrate has rightly found, that the cheque was not issued towards a legally enforceable debt or liability.

7. On hearing the learned Counsel for the parties, I find that, no case for grant of leave is made out. Undoubtedly, a presumption arises in favour of the applicant/complainant, when the drawer admits his signature on the cheque. However, that is a rebuttable presumption.

8. In the present case, it appears from the evidence led by the applicant and in particular, the evidence of PW-2, Mr. Vaz that the ownership of shares were never transferred in favour of the respondent. If, that be so, the defence set up by the respondent that the deal did not materialize, is rendered probable. In view of the specific submission that the respondent is not claiming the ownership of the shares, the apprehension expressed on behalf of the applicant, that the applicant has lost ownership of the shares and has also not received the consideration, does not survive. In my view, the finding recorded by the learned Magistrate, acquitting the respondent, is a plausible view, which does not require interference by this Court.

9. In the result, no case for grant of leave to appeal, is made out. The application, accordingly stands dismissed.

C. V. BHADANG, J.

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