

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 284 OF 2014

IN

STAMP NUMBER MAIN NO. 2739 OF 2014

DR. SRISHTI ASHUTOSH PRABHU
DESSAI.

... Applicant

Versus

MR. DADAMIYAN M. BAGEWADI @ IMRAN
MOHAMMAD UMAR BAGEWADI AND ANR.

... Respondent

Shri Ryan Da Piedade Menezes, Advocate for the Applicant.
Shri Suraj Naik, Advocate for the Respondent No. 1.

Coram:- C. V. BHADANG, J.

Date:- 6th April, 2015

P.C:

Heard Shri Menezes, learned Counsel for the applicant and Shri Naik, learned Counsel for the respondent no. 1.

2. It appears that according to the applicant, an amount of Rs.10,00,000/- was advanced by the first respondent and there was an agreement executed between the parties, which prima facie indicates that the first respondent has agreed to return the amount of Rs.10,00,000/- alongwith an amount of Rs.2,50,000/-, towards share in profit, within a fixed period of two months. The defence of the first respondent is that a blank cheque was passed and was handed over to the husband of the complainant and that was in respect of a different transaction.

3. The learned Magistrate has placed reliance on a decision of the Hon'ble Supreme Court in the case of Krishna Janardhan Bhat Vs. Dattatraya G. Hedge, 2008 Law Suit (SC) 55. It is submitted by the learned Counsel for the applicant that there is a subsequent decision of the Hon'ble Supreme Court in the case of Rangappa Vs. Sri Mohan, reported in 2010 ALL S.C.R. 1349, which would govern the field and be applicable. It is submitted that presumption under Sections 118 and 139 of the Negotiable Instruments Act would be available to the applicant. It is submitted that the learned Magistrate has not correctly appreciated this aspect.

4. Having heard the learned Counsel for the parties, I find that a case for grant of special leave to appeal is made out. In such circumstances, the application is allowed. Special leave to appeal is granted. The appeal be registered.

Action under Section 390 of the Code of Criminal Procedure to be taken by the learned Judicial Magistrate First Class, Panaji.

5. Call R and P.

C. V. BHADANG, J.

EV