IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 273 OF 2014

Mr. Chaudhary Satyendra Singh **... Applicant**

Versus

Mr. Prasad Kamat **... Respondent.**

Mr. Nigel Da Costa, Advocate for the applicant.
Mr. J. Godinho, Advocate for the respondents.

Coram :- K. L. WADANE, J.

Order Reserved on :- 12/03/2015.

Order Pronounced on :-

ORDER :

This is an application filed by the applicant-appellant for grant leave to appeal.

2. The applicant-appellant states that he is associated with the respondent for longtime and in the month of December 2006 the respondent approached to the applicant and represented that he was in personal difficulty and requested the applicant to advance the sum of Rs.5,00,000/-. Therefore, the applicant has advanced Rs.5,00,000/- to the respondent as a friendly loan. The respondent promised him to repay the said amount on or before 06/10/2008.

3. The respondent issued a cheque in favour of the applicant on

13/10/2008 drawn on the Goa Urban Co-operative Bank Ltd., Panaji for a sum of Rs.5,00,000/-. The applicant presented the cheque for its encashment but it was returned on 14/10/2008 with endorsement "account closed". Then the applicant sent demand notice to the respondent. In respect of the demand notice the respondent failed to represent the complaint. Hence, she filed the complaint before the Judicial Magistrate, First Class, Panaji. After recording of the evidence the learned Magistrate has acquitted the respondent holding that the applicant is a money lender. Hence, the present application for grant leave to appeal.

4. I have heard Mr. Nigel Da Costa, learned counsel for the applicant and Mr. J. Godinho, learned counsel for the respondent. I have gone through the evidence on record and the reasons recorded by the learned Judicial Magistrate, for the acquittal of the respondent.

5. On perusal of the record, it is seen that the applicant-appellant had issued two cheques i.e. one for sum of Rs.5,00,000/-, which is the subject matter of the present petition and another for Rs.3,00,000/-, for which the applicant filed a complaint under Section 138 of N. I. Act and in that proceeding the present applicant has admitted that, he was doing business of money lending. It is for the respondent to prove independently in the present proceeding that the applicant was / is doing business of money lending that to without lincence from the appropriate authority. Therefore, it is necessary to refer certain admission given by the applicant during the cross-examination in the present proceeding, which reads as follows :

> *"As per receipt Exh.22/C I had lend Rs.8,00,000/- to the accused. I admit that another cheque of Rs.3,00,000/- of the accused was deposited by me earlier and the case number was 1262/2008. I admit that my deposition was recorded in that case, shown to me a certified copy of the judgment in the said case issued by J.M.F.C., Panaji. I admit that the accused was acquitted in that case as I was found to be money lender."*

6. From the above statement of the applicant in his cross-examination, it appears that, in the proceeding case no.1262/2008 he was found to be money lender and therefore the accused was acquitted. The above statements of the applicant appears to be confirmed as his earlier statement made during the another trial. According to me, it has equally forced and importance particularly when it was re often in the present proceeding. Mr. Nigel Da Costa, the leaned counsel for the respondent has argued that the learned Judicial Magistrate has failed to pursue / consider the presumption under the provisions of Sections 118, 138 and 139 of the N. I. Act, and has relied upon the observations recorded in the case of ***Hiten P. Dalal vs. Bratindranath Banerjee reported in 2001(1) Supreme Court Cases 16.*** I have gone through the observations of the above cited authority, but the same are not applicable to the facts of present case simply because the fact that the applicant was a money lender has been successfully got on record. Mr. Nigel Da Costa further relied upon the observations made in the case of ***K. N. Beena vs. Muniyappan and another reported in AIR 2001 Supreme Court 2895 ,*** and argued that in view of the presumption it is for the respondent to establish that the cheque had not been issued for any debt or legally enforceable liability to account. We do not agree that the submission of Mr. Nigel Da Costa simply because the respondent has establish that the applicant was doing money lending business.

7. Looking to the reasons recorded by the learned Judicial Magistrate, First Class, Panaji, I do not think that a different view is possible, if appeal is admitted. Hence, the petition is rejected.

K. L. WADANE, J.

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