

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL MISC. APPLICATION NO. 230 OF 2015
IN
STAMP NUMBER MAIN NO. 1138 OF 2011

MR. RAKESH KAMBLI. ... Applicant
Versus
MR. AJIT TARI AND ANR., ... Respondents

Mr. S. Saudagar, Advocate for the applicant.

Coram:- C. V. BHADANG, J.

Date:- 18th April, 2016

P.C.

This is an application for leave to appeal against acquittal.

2. The applicant/ complainant had filed a complaint under Section 138 of N. I. Act against the first respondent. It was contended that the applicant had advanced an amount of Rs.1,06,000/- to the first respondent (out of which Rs.1,05,000/- was paid by a bearer cheque bearing no.731173). In repayment of the said amount, the first respondent passed a cheque which got dishonoured which led the applicant to file a complaint as aforesaid before the learned Judicial Magistrate, First Class at Panaji which was registered as Criminal Case No.OA/1198/2007/B. The first respondent admittedly did not issue any reply to the statutory notice issued by the applicant before initiating the prosecution. However, it appears that the defence

raised was that the cheque was misplaced and was misused by the applicant.

3. The learned Magistrate, by judgment and order dated 31/01/2011, has acquitted the first respondent, which is the subject matter of challenge in this application.

4. A perusal of the impugned judgment and order shows that the learned Magistrate relied upon the fact that the amount was not reflected in the Income Tax Return of the applicant. The learned Magistrate has placed reliance on two decisions of this Court in SAYEED IQBAL VAKIL VS. JAVED LATIF SHAIKH, reported in 2008 ALL MR (Cri) 2743 and VASUDEV RAMCHANDRA AHUJA VS. VILAS SHRIPATI KAMBLE, reported in 2006 ALL MR (Cri) 3203, in order to hold that the applicant had failed to establish that the cheque was issued in discharge of a legally enforceable debt or liability.

5. I have heard the learned Counsel for the applicant. The first respondent has failed to appear in spite of service of notice.

6. The learned Counsel for the applicant has pointed out that even assuming that the amount was not reflected in the Income Tax Return of the applicant, the bank statement of Dena Bank at Panaji, Goa in respect of Account No.SB General-14879 of the applicant, shows that

on 16/03/2006, cheque no.731173 was encashed and the amount of Rs.1,05,000/- was paid in cash to the first respondent. It is submitted that the learned Magistrate could not have brushed aside the evidence in the form of the statement of account.

7. Considering the overall circumstances, I find that a case for grant of leave is made out.

8. In the result, the application is allowed.

9. Office shall register the appeal and the same shall be treated as admitted.

10. Learned Magistrate to take action under Section 390 of Cr.P.C.

C. V. BHADANG, J.

SMA