IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPLICATION (MAIN) NO. 210 OF 2015

MR.SRUNIVASALU V. ANANTHU @
A.SREENIVASALU @ SREENVIVASALU V.
ANANTH @ ANANTHU V. SREENIVASULU. ... Applicant

Versus

MR. GIRI KASHINATH KURPASKAR AND
ANR., ... Respondents

Adv. Joaquim Godinho for the Applicant.
Adv. Rohit Bras De Sa for Respondent no. 1

Coram:- C. V. BHADANG, J.

Date:- 1st April, 2016

P.C.:

This is an application for leave to appeal against acquittal.

2. The brief facts are that the applicant filed Criminal Case No.OA/249/2013/D before the Judicial Magistrate First Class, Panaji, under section 138 of the Negotiable instruments Act, (the Act, for short) against the respondent/accused. The case made out in the complaint was that the respondent had borrowed an amount of Rs.2,75,000/- from the applicant for the repairs of his hotel. Towards repayment of the said amount, the respondent had passed two cheques dated 2/3/2013 for Rs.1,85,000/- and dated 5/3/2013 for Rs.90,000/-, both drawn on the Saving bank account of the respondent with the Bank of Maharashtra, Ponda, Branch. As the cheques were dishonoured on account of insufficient funds, the

complaint as aforesaid came to be lodged.

3. At the trial, the applicant examined himself and one Mr. V.V.R. Rao (PW.2). The respondent although did not lead any evidence put up a defence denying that he owned any amount to the applicant. He claimed that as the cheques given by the applicant to the respondent were not honoured, he had contacted the applicant, seeking return of the blank cheques, which according to the respondent were given as security in the year 2009. It was contended that the applicant did not return the cheques.

4. The learned Magistrate framed two point, namely, (i) whether there was any legally enforceable debt owned by the respondent towards the applicant and (ii) whether the respondent had committed an offence punishable under section 138 of the Act. The learned Magistrate on appreciation of the evidence answered both the points in the negative, thereby acquitting the respondent.

5. It is submitted by the learned counsel for the applicant that once the signature on the subject cheques was not disputed, a presumption would arise in favour of the applicant that the cheques were issued in discharge of a legally enforceable debt or liability. He submitted that the respondent has failed to discharge the said presumption. The learned counsel has placed reliance on the decision of the Hon'ble Supreme Court in the case of ULTRA TECH CEMENT LTD. VS.

RAKESH KUMAR SINGH AND ANR. reported in (2015) ALL MR (Cri) 3670 (S.C.), and in particular, para 10 thereof. He submitted that the fact that the amount was not reflected in the income tax returns would not be decisive, once the signature on the cheques was not disputed. He, therefore, submitted that the impugned judgment needs interference.

6. On the contrary it is submitted by the learned counsel for the respondent that the respondent has neither shown the source of such a huge amount nor that the amount was reflected in the income tax returns of the applicant. He submitted that the view taken by the learned Magistrate is a plausible view, which cannot be interfered with, in a limited challenge available against an order of acquittal.

7. I have considered the submissions made and perused the record. A perusal of the cross examination of the applicant shows that according to the applicant, an amount of Rs.2,75,000/- was given to the respondent in installments. He further claims that the first installment was of Rs.1,85,000/-, which was given some time in December 2012. He further claimed that the amount was lying with the applicant, as the same was withdrawn from his account. The applicant further claimed that he was keeping the cash in hand by withdrawing the same over a long period of time as he was to construct his house. When the amount of Rs.1,85,000/- was given to the respondent, the construction had not started and till the time of

leading the evidence, the house was not constructed. He further claimed that the amount of Rs.90,000/- was given to the respondent some time in January 2013 from out of the cash in hand lying at the house. The applicant has categorically admitted that although he files income tax returns, the amount lent to the respondent was not shown in the income tax returns. He also admitted that besides the subject cheques, he does not have any document to show that the respondent was borrowing money from him. He also claimed that the money lent did not carry any interest.

8. The learned Magistrate on appreciation of all these circumstances and after noticing that the respondent had displaced the presumption on preponderance of probability has come to the conclusion, and to my mind rightly so, that the applicant had failed to prove that the subject cheques were issued towards discharge of a legally enforceable debt or liability.

9. There cannot be any manner of dispute that on the respondent/accused not disputing the signatures on the cheque, a presumption would arise in favour of the applicant/complainant under section 139 of the Act. However, the said presumption is rebuttal. The burden of proof which lies on the complainant and the accused is not similar. While the complainant is required to prove the case beyond reasonable doubt, the respondent/accused can discharge the burden on preponderance of probability. In my humble opinion,

the judgment in the case of Ultra Tech Cement Ltd. (supra) is clearly distinguishable on facts. In that case, the Hon'ble Apex Court had found that the accused had issued instructions for stop payment which implies that the accused had knowledge of the cheques being presented to the bank.

10. It can well be seen that unless and until the amount is reflected in the income tax returns and also on account of a breach of the provisions of section 269 SS of the Income Tax Act, the finding recorded by the learned Magistrate cannot be interfered with.

11. In the overall circumstances, once the view taken by the Magistrate is found to be a plausible view and not an impossible one, no interference is called for. In the result the Criminal Misc. Application is rejected.

C. V. BHADANG, J.

ap/-