

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL MISC. APPLICATION NO. 281 OF 2015
IN
STAMP NUMBER MAIN NO. 1502 OF 2015

MR. DNYANESHWAR NAIK., ... Applicant
Versus
MR. SAJJAN V. KUDAV AND ANR., ... Respondents

Mr. J. J. Mulgaonkar, Advocate for the Applicant.
Mr. V. A. Lawande and Ms. Fiona Cardozo, Advocates for the Respondents.

Coram:- C. V. BHADANG, J.

Date:- 25th April, 2016

ORDER

Heard learned Counsel for the Applicant and the learned Counsel for the Respondents.

2. This is an application for leave to appeal against acquittal. The Applicant had filed Criminal case no. 31/0A/NI/2014/A before the learned Judicial Magistrate First Class at Vasco da Gama, against the first Respondent alleging offence under Section 138 of the Negotiable Instruments Act, ('Act' for short). The case made out in the complaint is that the Complainant had carried out certain repairs of a barge belonging to M/s. Shruti Ore Carriers which is a proprietary concern of one Shakuntala Kudal, who is the wife of the first Respondent. Admittedly, the first Respondent had signed the

subject cheque for Rs.3,00,000/- in favour of the Applicant towards the repair charges as authorised signatory of M/s. Shruti Ore Carriers. The cheque was dishonoured on presentation for realisation. The Applicant issued a notice to the first Respondent and thereafter lodged complaint. The proprietaryship concern i.e. M/s. Shruti Ore Carriers and its proprietor namely Shakuntala Kudal, were neither issued with any notice nor made parties in the complaint. This found favour with the learned Magistrate as well as learned Sessions Judge in recording concurrent findings of acquittal.

3. It is submitted by the learned Counsel for the Applicant that when the first Respondent had signed the cheque as an authorised signatory, he would be liable in the capacity as the drawer of the cheque. He places reliance on the decision of the Gujarat High Court in the case of NAVINHANDRA DHARMASHIBHAI DOSHI VS. NATVARLAL & CO. AHMEDABAD & ORS. reported in CDJ 2000 GHC 861, in order to submit that in such a case, the signatory to the cheque being the drawer would be liable.

4. On the contrary, the learned Counsel for the first Respondent has placed reliance on the phraseology as used in Section 138 of the Act, as also the decision of the Hon'ble Supreme Court in the case of RAGHU LAKSHMINARAYANAN VS. FINE TUBES reported in (2007) 5 SCC 103. It is submitted that even under Section 138 of the Act, where any cheque drawn by person "on an account

maintained by him with a banker" for payment of any amount of money to another person from out of that account, the liability arises. Learned Counsel further points out that the liability can only arise where the cheque is issued by a person on an account maintained by him which would not be the case in the present matter.

5. It is countered on behalf of the Applicant saying that an authorised signatory can be held to be a person who "maintains the account." Learned Counsel points out that Section 138 of the Act does not speak about an account in the name of the drawer of the cheque.

6. On hearing the parties, I find that an arguable question arises. Hence, leave is granted to file the Appeal against acquittal. The application is accordingly allowed. The office shall register the Appeal and the same shall be treated as admitted.

7. Learned J.M.F.C., Vasco da Gama, shall take action under Section 390 of Cr.P.C.

C. V. BHADANG, J.

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