

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 121 OF 2016

IN

STAMP NUMBER MAIN NO. 1805 OF 2016

SHRI. RATIKANT R. BANDEKAR.

... Applicant

Versus

JENNYTECH SERVICES, REP. BY ITS
PROPRIETOR, SHRI. HEMANT DHARMA
CHODANKAR.

... Respondent

Mr. Sudesh Usgaonkar with Ms. Rosette Pereira, Advocates for the Applicant.

Mr. Rohan P. Desai, Advocate for the Respondent.

Coram:- C. V. BHADANG, J.

Date:- 5th October, 2016

P.C:

Heard the learned Counsel for the applicant and the learned Counsel for the respondent.

2. This is an application for leave to appeal against acquittal from the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (the N.I. Act, for short). The reason for acquittal is that according to the Magistrate, the applicant has not proved that the subject cheque was issued in discharge of legally enforceable liability. It appears that there was a cancellation agreement dated 31.10.2012 between the applicant (first party), the respondent (third party) and the builder and developer, who was the

second party. In para 4 of the said agreement, the respondent has agreed to pay the sum of Rs.6 lakhs to the applicant by cheque bearing no. 560350 drawn on ICICI Bank, Vasco-da-Gama branch, which is the subject cheque.

3. The learned Magistrate has observed that the proceedings under Section 138 of the N.I. Act are not in the nature of a civil suit. However, the learned Magistrate has in depth gone into the nature of the transaction and the question of ownership of the flat and the question whether the applicant was entitled to transfer the said flat, when in fact the applicant was only having an agreement for sale in his favour.

4. The learned Counsel for the respondent submits that the Magistrate has thoroughly considered the evidence and has rightly come to the conclusion that the principle requirement of existence of a legally enforceable liability, is not established.

5. On hearing the learned Counsel for the parties and on perusal of the record, I find that a case for grant of leave to appeal against acquittal is made out.

6. In the result, the criminal miscellaneous application is allowed, granting leave to file appeal against acquittal. The office shall register the appeal and the same shall be treated as admitted. The

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

C. V. BHADANG, J.

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