IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 273 OF 2015
IN
STAMP NUMBER MAIN NO. 1809 OF 2015

SHRI SARVESH ROHIDAS SHIRODKAR ... Applicant

Versus

SHRI MAJBOOR MEHBOOB AND ANR., ... Respondents

***

Mr. Ashwin D. Bhobe, Advocate for the Applicant.

Mr. Hanumant D. Naik, Advocate for Respondent No. 1.

Respondent No. 2-State is a formal party.

CORAM:- C.V. BHADANG, J.

DATE:- 13th JUNE, 2016.

ORAL ORDER:

Heard the learned Counsel for the applicant and the respondent no. 1.

2. This is an application for leave to appeal against acquittal. The applicant had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (the Act, for short), against the respondent no. 1. The case made out in the complaint was that the applicant had accommodated

respondent no. 1 in the sum of Rs.60,000/-, by way of a hand loan and towards repayment of the same, the respondent no. 1 had issued a cheque dated 31.01.2011 in favour of the applicant for Rs.60,000/-, drawn on Syndicate Bank, Kavlem Branch, Ponda. The said cheque got dishonoured, whereupon the aforesaid complaint came to be filed.

3. The learned Magistrate framed five points, out of which, point nos. 1 and 3 were answered in the negative and against the applicant. The learned Magistrate thus, found that the applicant had failed to prove that the subject cheque was issued towards discharge of a legally enforceable debt or liability. The learned Magistrate also found that the applicant had failed to prove that the subject cheque was returned unpaid for funds insufficient, as the memo issued by the Syndicate Bank was found to be unsigned and consequently, the intimation of the applicant's bank was also found to be unsubstantiated.

4. The learned Magistrate found that the applicant has filed several similar complaints against

various persons as set out in paragraph 10 of the judgment, who were neither related nor friends of the applicant. The learned Magistrate found that the applicant was in money lending business without license. In that view of the matter, it was found that the subject cheque cannot be said to be issued in discharge of a legally enforceable debt or liability.

5. The learned Counsel for the applicant submits that merely because some other complaints were lodged, it would not be sufficient to say that the applicant was indulging into illegal money lending. He also submits that the memo issued by the Syndicate Bank was in consequence of official business and the fact that it was unsigned was not sufficient to hold that the subject cheque was not dishonoured on account of insufficient funds.

6. The learned Counsel for the respondent no. 1 has supported the impugned judgment. It is submitted that once the applicant has admitted that several similar complaints were filed by the applicant, in which the accused persons were neither related nor

friends of the applicant, the applicant had no reason to accommodate them by way of temporary advance and, this was sufficient to hold that the applicant was in illegal business of money lending without license.

7. I have given my anxious consideration to the rival circumstances and the submissions made. I have also carefully gone through the impugned order and I find that the view taken by the learned Magistrate is a plausible view, which does not require interference.

8. The learned Magistrate has noticed in paragraph 10 of the judgment that there are several complaints filed, atleast against 17 persons as set out in paragraph 10 of the judgment. The applicant also admits that none of these persons were related or were his friends. The applicant claimed that these complaints were in respect of some business transactions. However, the certified copy of the complaints showed that these cases were in respect of alleged hand loans advanced by the applicant. In that view of the matter, the learned Magistrate has found, and to my mind rightly so, that the applicant was

indulging in the business of money lending without license. For this reason alone, the complaint was liable to be dismissed.

9. In paragraph 11, the learned Magistrate has further found that the applicant had deposited the subject cheque in his account with Vijaya Bank at Ponda and it was returned unpaid for the reasons shown as insufficient funds. The cheque return memo and the intimation letter are produced at Exhibits 15 and 16. The learned Magistrate has found that the cheque return memo issued by the Syndicate Bank (Exhibit-15) was neither bearing the seal of the bank nor signature of any bank officer. It was found that the intimation letter, which was issued by the Vijaya Bank was also consequently, not proved.

10. It can thus be seen that the findings recorded by the learned Magistrate against point nos. 1 and 3 are based on the oral and documentary evidence on record and as such, no case for interference is made out.

In the result, the criminal miscellaneous application is dismissed, with no order as to costs.

C.V. BHADANG, J.

EV