

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL MISC. APPLICATION NO. 246 OF 2014
IN
STAMP NUMBER MAIN NO. 2227 OF 2014

SHRI RAISON ALMEIDA Applicant
Versus
SMT. SUNITA BILLIYE AND ANR. ... Respondent

Adv. Vivek Angelo Rodrigues for the Applicant.

Coram:- S. B. SHUKRE, J.

Date:- 10th March, 2016

P.C.:

Heard learned counsel for the applicant/appellant.

2. None for the respondents, though duly served and given sufficient opportunity.

3. It is seen from the judgment of the learned Sessions Judge passed in Criminal Appeal No.95/2012 on 22/8/2013, which is impugned herein that the learned Sessions Judge has reversed the finding of guilt of both the respondents, upon considerations, at least in so far as respondent no.1 is concerned, not germane to the heart of the matter. The heart of the matter is that one cheque bearing no.715677 drawn on UCO Bank dated 30/3/2006 issued for Rs.1,50,000/- in favour of the applicant/appellant by respondent no.1, in discharge of legally enforceable debt has been dishonoured for want of sufficient

funds in the account of respondent no.1 and that there is no sufficient evidence available on record indicating that the defence of respondent no.1 that there is no legally enforceable debt in existence at the time when the cheque was deposited was probable. In the opinion of the learned Sessions Judge, this defence was probable because the income tax returns were not produced in evidence by the applicant/appellant, whereas there is an agreement dated 11/2/2005 cancelling the original agreement regarding sale of shop and imposing a liability upon both the respondents to refund the amount of Rs.6.00 lakhs. This agreement has not been considered properly by the learned Sessions Judge. It is pertinent to mention here that in this agreement there is a specific reference to the subject cheque. The drawer of the subject cheque was respondent no.1.

2. In view of the above, I find that a case has been made out by the learned counsel for the applicant/appellant to grant leave to file appeal under section 378 of C.P.C. Leave to file appeal has been granted. Appeal be registered. Action under section 390 to follow.

3. Issue notice before admission in the appeal to the respondents, returnable on 31/3/2016.

S. B. SHUKRE, J.

ap/-