

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 262 OF 2015

IN

STAMP NUMBER MAIN NO. 2687 OF 2015

SHRI. HANUMANT ESHWAR PIRANKAR. ... Applicant
Versus
SHRI DEVIDAS NILKANTH KALANGUTKAR. ... Respondent

Mr. Vishnuprasad A. Lawande and Ms. P. Kaur, Advocates for the applicant.
Mr. Shivan Dessai, Advocate for the respondent.

Coram:- C. V. BHADANG, J.

Date:- 16th June, 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.
3. The applicant had allegedly sold a Truck to the respondent in respect of which, an agreement dated 15/08/2012 was drawn. According to the complainant, out of the total consideration of Rs.7 Lakhs, Rs.1 Lakh was paid by a cheque bearing No.025174 while the remaining amount of Rs.6 Lakhs was agreed to be paid by virtue of 12 post dated cheques for Rs.50,000/- each. The record shows that the cheque dated 16/08/2012 for Rs. 1 Lakh and two other cheques i.e. dated 15/10/2012 and 15/12/2012 for Rs.50,000/- each also got encashed. The third cheque dated 15/02/2013 bearing No.025172 got dishonoured giving rise to the present complaint.

4. The learned Magistrate framed three points out of which point nos.1 and 3 have been answered in the negative. The material ground on which the respondent has been acquitted is that the applicant has not proved that the cheque was issued in discharge of a legally enforceable debt or liability. Prima facie, at this stage, it appears that in the notice reply, issued by the respondent, he had admitted about the transaction and had sought time to pay the balance. Although a defence was raised that the Truck was sold to one Prajyot Korgaonkar (who is shown as a witness in the agreement), the RTO information produced at Exh.67/c shows that the Truck was transferred in the name of one Sanjay Arolkar. In this case, once the signature on the cheque is admitted, a presumption would arise. The question would be whether the presumption stands rebutted. In the overall circumstances, I find that a case for grant of leave is made out.

5. In the result, the application is allowed. The office shall register the appeal and the same shall be treated as admitted. The learned Magistrate shall take action under Section 390 of Cr.P.C.

C. V. BHADANG, J.

SMA