

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 44 OF 2016

IN

STAMP NUMBER MAIN NO. 3198 OF 2015

MR. ANTONIO JOSE JOAQUIM DE SOUZA. ... Applicant
Versus
MRS. RITA D'SOUZA AND ANR., ... Respondents

Mr. R. G. Ramani and Mr. Myron D' Souza, Advocates for the Applicant.

Mr. M. Teles and Mr. D. Lawande, Advocates for the Respondent no. 1.

Mr. D. Lawande, Addl. Public Prosecutor for the Respondent no. 2.

Coram:- C. V. BHADANG, J.

Date:- 22nd March, 2016

P.C.

Heard Mr. Ramani, learned Counsel appearing for the Applicant and Mr. Teles, learned Counsel appearing for the Respondent no. 1.

2. An interesting question of law arises in the present Appeal/Application namely whether an unsigned notice issued under Section 138 of the Negotiable Instrument Act, can be said to be valid. Two learned Single Judge's, one each of the Karnataka High Court and the Rajasthan High Court, have recorded contrary conclusions. The learned Magistrate had found that the notice although was unsigned, could be acted upon and proceeded to convict the Applicant for the offence punishable under Section 138 of the

Negotiable Instrument Act. It appears that before the learned Single Judge, the Judgment of the Karnataka High Court, in the case of Sri Satyanarayana Gowda vs. B. Rangappa reported in 1996 Cri. L. J. 2264, was cited in order to submit that the notice although unsigned, can be acted upon and can form the basis of the conviction. There is a subsequent decision of the learned Single Judge of the Rajasthan High Court in the case of Ramesh Chandra Baregama vs. Ramesh Chandra Joshi, reported in 2012 (4) Crimes 139 (Raj.) holding otherwise. It appears that the learned Single Judge of the Rajasthan High Court has considered the decision of the Karnataka High Court in the case of Sri Satyanarayana Gowda (supra). The learned Sessions Judge in the present case, has recorded dissent with the view taken by the Karnataka High Court and held that the notice would not be valid considering the provisions of Section 94 and Section 138(b) of the Negotiable Instrument Act. In that view of the matter, the Appeal came to be allowed and the first Respondent has been acquitted.

3. It is submitted by the learned Counsel appearing for the Applicant that inspite of efforts, he could not find a decision of this Court on any such issue. He further points out that the Hon'ble Apex Court has held in several decisions that a notice sent by fax and/or email is a valid notice. It is pointed out that the notice sent by email/fax, would not bear any signature and still it is held to be valid.

4. Having heard the learned Counsel appearing for the parties, I find that a case for grant of Leave to Appeal is made out. In the result, the application is allowed. Let the Criminal Appeal be registered.

5. In view of grant of the leave, the Criminal Appeal 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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