

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL APPEAL NO. 23 OF 2013**

Mr. Sheikh Shabbir, Age 51 years, married,
business, r/o H. No. 683, Moira, Alta
Fondem, Bardez, Goa. Appellant

Versus

1. Mrs. Shashikala Prabhakar
Sankhalkar, age 60 years, married,
housewife,
2. Miss Anuja Prabhakar Sankhalkar,
age 28 years, unmarried, service,
both r/o FF-07, 4th floor, Rani Pramila
Arcade, 18th June Road, Panaji, Goa.
3. Mr. Suresh Pandurang Chougale, age
30 years, bachelor, business.
4. Mr. Vijay Palasule, age 28 years,
bachelor, business, both r/o F-206, 2nd
floor, Laxmi Apts., Tonca, Miramar,
Panaji, Goa. Respondents

Shri Gaurish Agni, Advocate for the Appellant.

Shri Joaquim Godinho, Advocate for the Respondent Nos. 1 & 2.

CORAM:- C.V. BHADANG, J.

DATE:- 20th JUNE, 2017.

ORAL JUDGMENT:

This is an appeal against acquittal. The appellant had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881, against the respondent nos. 1 and 2 for dishonour of the cheque. The learned Magistrate acquitted the respondent nos. 1 and 2 vide judgment and order dated

31.10.2011. One of the reasons for acquittal is that there was no material to show that the appellant had advanced a sum of Rs.1 lakh to the respondent nos. 1 and 2. The learned Magistrate has also relied upon Section 269-SS of the Income Tax Act, in order to hold that a transaction in excess of Rs.20,000/-, cannot be in cash.

2. On behalf of the appellant, an extract of the bank account is sought to be produced on record. That statement of account is in respect of the bank account of the appellant with Canara Bank. According to the appellant, the statement shows the transaction dated 28.10.2008.

3. The learned Counsel for the respondent nos. 1 and 2 opposes the production of the statement of account and disputes the correctness of the same. The learned Counsel for the respondent nos. 1 and 2 states that in the event, the document is allowed to be produced, the matter will have to go back to the learned Magistrate. The learned Counsel for the respondent nos. 1 and 2 states that there is also an issue whether, the original complainants could have filed the complaint in their individual capacity.

4. The learned Counsel for the parties fairly submit that all these points may be left open for determination by the learned Magistrate.

5. In view of the above, the following order is passed:

ORDER

(a) The Criminal Appeal is partly allowed.

(b) The impugned judgment and order dated 31.10.2011, is hereby set aside.

(c) Criminal Case No. OA NIA 568/09/C, is restored to the file of the learned Judicial Magistrate First Class at Panaji, for disposal in accordance with law.

(d) Parties to appear before the learned Magistrate on 17.07.2017 at 10:00 a.m.

(e) Rival contentions of the parties on merits are left open.

(f) Rule is made absolute in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.