

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL MISC. APPLICATION NO. 64 OF 2017
IN
STAMP NUMBER MAIN NO. 209 OF 2017

WITH
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M/S G.K.B. HI-TECH LENSES PVT.
LTD., EARLIER M/S. GOA OPTOLAB
PVT. LTD., THR. SHRI. NEERAJ GUPTA., ... Appellant

Versus

SHRI. NARESH GUPTA AND ANR., ... Respondents

Mr. Ajit R. Kantak with Ms. Rajas Kantak, Advocates for the Appellant.

Mr. Parag Rao, Advocate for the Respondent No. 1.

CORAM:- M. S. SONAK, J.

DATED:- 28th APRIL, 2017

ORAL ORDER:

Leave to appeal is granted and the appeal is taken up for final disposal at this stage itself.

2. Heard Mr. Kantak for the appellant and Mr. Rao for the respondent no. 1.

3. The challenge in this appeal is to, the two orders dated 17.11.2016. By the first order, the learned Magistrate has dismissed the appellant's application for exemption from appearance. By the second order of the same date, the learned Magistrate has dismissed the complaint itself and acquitted the respondent no. 1, again, on the ground of the absence of the complainant.

4. Mr. Kantak, learned Counsel for the appellant points out that 17.11.2016 was effectively the first date and therefore, the absence of the appellant on the said date should have been considered with leniency. He points out that the respondent no. 1 had even endorsed no objection on the application seeking adjournment. He submits that though, the complaint relates back to the year 2007, there was stay of the proceedings followed by other proceedings before the Sessions Judge as well as this Court and therefore, the appellant is not responsible for the delay. He submits that the impugned orders are harsh and disproportionate and therefore, be set aside.

5. Mr. Rao, learned Counsel for the respondent no. 1 submits that the private complaint is quite frivolous and meant

to harass the respondent, who is 62 years and is resident of Delhi. He submits that the respondent no. 1 has already obtained Decree from the Civil Court and hence, the profile of the complaint is predominantly civil in nature. He submits that on 17.11.2016, the learned Counsel appearing for the appellant stated that the Managing Director of the appellant is abroad and there are no prospects of his returning for further two months. He further submits that this is an old matter and the Magistrate is quite justified in making the impugned orders.

6. Upon due consideration of the rival contentions and upon perusing the record, the impugned orders are required to be set aside, however, upon imposition of some conditions upon the appellant. Since the appellant has instituted the complaint, it is the responsibility of the appellant to remain present and lead the evidence in the matter. Statements like the Managing Director is abroad or that there are no prospects of his returning for further two months are statements, which cannot be lightly made or in any case lightly accepted.

7. Mr. Kantak submits that the learned Magistrate could as well have directed some other Officer of the Company to

remain present and depose in the matter. It is not for the Magistrate to either advise or direct the complainant to exercise the option as available under the law. If, examination of any Officer was possible, then, the appellant should have itself, made arrangements for the presence of such Officer or any other authorized Officer as permitted under the law, to remain present and proceed in the matter. The statements which are recorded in the impugned orders state that learned Counsel for the appellant did make statement that there are no prospects of the complainant returning back for further two months. This does indicate that the appellant's approach in pursuing the matter was casual or non serious.

8. It must be noted that these are old matters and directions have been issued from time to time to the Magistrate to dispose of the old matters expeditiously. When considered from this perspective and coupled with the statement that there are no prospects of the complainant returning back for further two months, it cannot be said that there was no justification whatsoever, for making the impugned orders. However, the orders, in the facts and circumstances of the present case, appear to be rather harsh upon the appellant. There are certain

mitigating factors like the presence of the appellant on the previous occasion, the circumstance that 17.11.2016 was effectively the first date for the complainant to proceed with the matter and that the earlier dates were mostly in the context of service and matters of like nature. Upon consideration of all these aspects, the impugned order can be set aside, however, requiring the appellant to pay costs of Rs.50,000/- within a period of four weeks from today.

9. The impugned orders are accordingly set aside and the Criminal Case No. 37/S/2007/B is restored to the file of the learned Magistrate, subject to the appellant depositing before the learned Magistrate an amount of Rs.50,000/-, within a period of four weeks from today. The respondent shall be at liberty to withdraw the amount of costs, in case the same are deposited before the learned Magistrate by the appellant.

10. In case the costs are deposited, the complainant shall appear before the learned Magistrate on 16th June, 2017 at 2:30 p.m. If, this date is not convenient for the learned Magistrate, the learned Magistrate shall be at liberty to fix some other date. On the adjourned date as well as the dates fixed by the learned

Magistrate, the complainant shall remain present so that the matter can proceed with the dispatch.

11. If, the amount of Rs.50,000/- is not deposited within four weeks from today, then, the appeal will be deemed to have been dismissed, without further reference to the Court. The appeal is allowed in the the aforesaid terms. All concerned to act on the basis of the authenticated copy of the order.

M. S. SONAK, J.

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