IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 34 OF 2017
IN
STAMP NUMBER MAIN NO. 734 OF 2016

M/S. PRIMESLOTS PROPERTIES PVT. LTD., REP. BY ITS MANAGING DIRECTOR, MR. PRADEEP D. PALYEKAR., ... Applicant

Versus

SAPLE INFOTECH PVT. LTD. AND 3 ORS., ... Respondents

Mr. Vishnuprasad A. Lawande and Ms. P. Kaur, Advocates for the applicant.
Mr. Ajit R. Kantak, Advocate for the respondent nos.1 to 4.

Coram:- PRITHVIRAJ K. CHAVAN, J.

Date:- 17th July, 2017

P.C.

Heard Mr. V. A. Lawande, learned Counsel for the applicant and Mr. Ajit R. Kantak, learned Counsel for the respondent nos.1 to 4.

2. This is an application under Section 378 of the Criminal Procedure Code, 1973 seeking leave to appeal against the impugned judgment and order of acquittal passed by the learned JMFC, Panaji Goa, dated 23.12.2015 in N.I.Act case No.108/2011/C.

3. My attention is drawn by the learned Counsel appearing for the applicant to a letter alleged to have been written by the

respondent no.2, Managing Director of the respondent no.1 in his individual capacity as well as in a capacity of Managing Director, that the said company owe to the applicant an amount of Rs.22,00,000/- (Rupees twenty two lakhs only) i.e amount of cheque dated 31.1.2011 and further, that on behalf of the respondent no.1, the respondent no. 2 took full responsibility to honour the payment of cheque in acapacity of Managing Director of the respondent no.1. My attention is also drawn, inter alia, to the statement of the respondent no.2 under Section 313 of Cr.P.C. recorded by the learned JMFC, Panaji more particularly while answering question no.3 wherein he had stated that he had paid the entire amount.

4. On the other hand, learned Counsel for the respondents took me through the evidence of the witnesses as well as records, more particularly the evidence of Bank Manager of Mapusa Urban Co-operative Bank of Goa Ltd., wherein he had stated before the Trial Court that by letter dated 1.2.2011 the cheque in question was returned by Vijay Bank Ltd. Vasco Branch to the Mapusa Urban Co-operative Bank as the cheque could not be honoured due to insufficient funds. The extract of Mapusa Urban Bank reveals that the complaint's representative was made aware about insufficient funds on 10.2.2011 which according to the learned Counsel for the respondent is a bogus entry in view of the evidence on record. The learned Counsel for the respondents therefore, supports the impugned judgment of

acquittal.

5. At the outset, it appears that the entire evidence needs to be minutely scrutinized and re-appreciated in view of the rival submissions at the bar in order to reach a correct conclusion.

6. It is also important to see as to whether there was a due compliance of clause (b) of Section 138 of the Negotiable Instruments Act as regards mandatory notice in writing to be issued to the drawer of the cheque by the original complainant within 30 days of the receipt of the information by it from the bank.

7. In view of the aforesaid circumstances, I am of the view that leave to appeal needs to be granted. Accordingly, leave to appeal is granted. Appeal be accordingly registered. Application stands disposed.

PRITHVIRAJ K. CHAVAN, J.

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