IN THE HIGH COURT OF BOMBAY AT GOA

Criminal Misc. Application No.184/2017

Shri Govind B.Prabhugaonkar Applicant

Versus

Rajendra Anant Varik Respondent

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Shri V.A.Lawande with Ms. A. Kamat, Advocates for the applicant.
Shri J.A.Lobo, Advocate for the respondent.

CORAM : PRITHVIRAJ K.CHAVAN, J.
ORDER RESERVEDE ON : 25.09.2017
ORDER PRONOUNCED ON :03.10.2017.

ORDER:

1. By this application, the applicant-appellant, who is the original complainant, seeks special leave to appeal against the judgment and order of acquittal in Criminal Appeal No.72/2016 passed by the learned Additional Sessions Judge, Margao on 9.2.2017 by reversing the judgment of conviction dated 12.8.2016 in Criminal Case No.29/NI/2014.

2. Heard Ms. A.Kamat, learned counsel appearing for the applicant-appellant. She assailed the judgment and order of the lower Appellate Court mainly on the ground that the learned Additional Sessions Judge had wrongly held that the appellant is a money lender without there being any cogent evidence on record and more particularly erred in

appreciating the fact that the respondent-accused had admitted borrowing of Rs.Two lakhs from the appellant and issuing two cheques dated 4/6/2014 drawn on Corporation Bank in favour of the appellant. It is also pointed out that there is no suggestion in cross that the appellant is a money lender nor any suggestion that he used to advance cash amount to the people.

3. On the other hand, Shri Lobo, learned counsel appearing for the respondent submits that on preponderance of probabilities the respondent had shown that the appellant is a money lender and his income is Rs.40,000/- in a month and, therefore, could not have advanced Rs.Two lakhs to the respondent. The learned counsel has drawn my attention to the notice and the reply and submits that the complainant has failed to prove beyond reasonable doubt the case against the respondent.

4. It is apparent from the cross-examination of the appellant as well as from the admission of the accused that he had accepted Rs.Two lakhs from the complainant and issued two cheques of Rs.One lakh each bearing no.031631 and 031632 dated 4.6.2014. A statutory presumption under

Section 139 of the Negotiable Instruments Act and in view of the judgment of the Hon'ble Supreme Court in **Rangappa Vs. Sri Mohan (AIR 2010 SC 1898)** comes into play which provides existence of legally enforceable debt or liability. Admittedly, the respondent did not enter into witness box as it is not mandatory for him to rebut the presumption only by entering into witness box. The question is whether even on preponderance of probability, he had shown or proved that he had repaid the amount to the complainant. It is significant to note that by letter dated 9.7.2014 the respondent had asked the appellant to return the cheques but on 2.6.2014 itself he had written to the bank to close his account for which he did not tender any explanation. If he had repaid the amount to the complainant by July 2013 he ought to have demanded the cheques back but it appears that he waited till 2nd June 2014 when he requested to close his account. So, on the date of issuance of cheques dated 4.6.2014 the account of the accused was not in existence. The question as to whether the subject cheques are written in different inks and the fact as to whether it was a legally enforceable debt or otherwise in view of the defence of the respondent that the appellant is a money lender needs to be appreciated by analysing the evidence on record.

5. For the aforesaid reasons, special leave needs to be granted and accordingly it is granted. Registry is directed to register the appeal. Action under Section 390 of Code of Criminal Procedure to follow.

6. Application stands disposed of accordingly.

PRITHVIRAJ K.CHAVAN, J.

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