

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL MISC. APPLICATION NO. 144 OF 2016
IN
STAMP NUMBER MAIN NO. 1503 OF 2016

M/S. WEST COAST CARRIERS, SOLE
PROPRIETARY CONCERN THR. ITS
PROPRITOR, MR. SATISH BAJPAI.

... Applicant

Versus

M/S. MAHALAXMI GROUP TRANSPORT
CO., THR. ITS DIRECTOR MR. PRATAP
S. DHIRAY AND ANR.

... Respondent

Adv. Neelesh Takkekar for the Applicant.

Adv. Ashwin D. Bhobe with Ms. S. Bhobe for Respondent no.1

Coram:- C. V. BHADANG, J.

Date:- 16th January, 2017

P.C.:

This is an application for Leave to Appeal against acquittal. The applicant had filed a complaint under section 138 of the Negotiable Instruments Act against the respondent. The case made out in the complaint was that the applicant had advanced a hand loan to the respondent for business purpose. The cheque issued by the respondent towards repayment of the said amount got dishonoured which led to the filing of the complaint.

2. It appears that initially the respondent was convicted and the matter was carried in appeal before the learned Sessions Judge, who remanded the complaint back, as the issue of the applicant

indulging in illegal money lending transactions which is prohibited under the Money Lender's Act, 2001 was not raised/ gone into. After the remand, the learned Magistrate has answered the point no.1 in the negative thereby holding that the applicant had failed to prove that the subject cheque was issued in discharge of a legally enforceable debt or liability. The learned magistrate had found, on the basis of para 2 of the complaint and a series of earlier transactions between parties, namely, a transaction in 2004 and 2007, 2 transactions in 2008 and 5 transactions in 2009, that the applicant was indulging in illegal money lending. The learned magistrate has thereafter relied upon the provisions of section 14 of the Money- Lender's Act which provide that no Court shall pass a decree against the money lender to which the said act applies, unless the Court is satisfied that at the time when the loan or any part thereof to which the suit relates was advanced, the money lender had a valid licence and if the Court is satisfied that the money lender did not hold a valid licence it shall dismiss the suit. Thus on the basis of the finding on point no.1, the respondent came to be acquitted.

3. I have heard Mr. Takkekar, the learned counsel for the applicant and Shri Bhobe, the learned counsel appearing for the first respondent. With the assistance of the learned counsel for the parties, I have perused the record and the gone through the impugned judgment.

4. The only contention raised on behalf of the petitioner is that there is presumption in favour of the applicant which has not been discharged by the first respondent by leading evidence in defence. To my mind the submission cannot be accepted. It is now well settled that for discharging the burden arising out of sections 118 and 139 of the N.I. Act, it is not necessary for the accused to examine himself in defence or lead any other evidence. The accused can discharge the said burden on the basis of the cross examination of the complaint, his witnesses and the material produced on record. In the complaint, the case made out in para 2 of the complaint is as under:

"That the accused had taken/borrowed money from the complainant for business purpose, for which receipt had been issued and had promised to repay the same along with interest till it's finally paid."

5. The applicant had verified the complaint before the Magistrate and not only that in his chief examination had reiterated that the amount was advanced on interest. There were series of receipts produced on record which also establishes that there were repeated transactions between the applicant and the accused right from 2004 and in 2009, there were as many as 5 transactions, which would clearly suggest that the applicant was indulging in the business of money lending without licence.

Thus, the view taken by the learned magistrate is a plausible view based on the evidence and other material on record. It is well settled that in a challenge to the judgement of acquittal, this Court cannot substitute its view unless and until it is found that the view taken by the trial court is perverse. In the present case, the view taken by the learned magistrate is clearly a plausible view which does not call for any interference. Thus, no case for grant of leave is made out. The application is accordingly dismissed.

C. V. BHADANG, J.

ap/-