

IN THE HIGH COURT OF BOMBAY AT GOA.
CRIMINAL MISC. APPLICATION NO.198 OF 2017
IN
STAMP NUMBER MAIN NO.2157 OF 2017.

Shri Prakash Datta Dessai(Dec)
Thr. Lrs. Mrs. Prajyoti Prakash Dessai, Applicant.

Vs.

Smt. Silverina Gracias Respondent.

Coram:- PRITHVIRAJ K. CHAVAN,J.

Reserved on:-18th September, 2017.

Pronounced on:- 20th September, 2017.

Shri I. Agha, Advocate for the applicant.

Shri Zeller D'Souza, Advocate for the respondent.

ORDER

By this application, the applicant who is legal representative and widow of original complainant seeks special leave to appeal against judgment and order of acquittal dated 2.5.2017 passed by the learned Judicial Magistrate, First Class, Canacona in Criminal Case No.17/OA/NIA/2015 by which the respondent came to be acquitted of the offence punishable under Section 138 of the Negotiable Instruments Act (for short "NIA")

2. The learned Counsel for the applicant submits that the

legal notice issued by the complainant on 6.5.2015 had been acknowledged and replied by the respondent/accused on 16.5.2015 by which she had admitted issuance of the cheque in question, albeit, instead of Rs.4,00,000/-, the reply indicates that she had borrowed Rs.5,00,000/- from the complainant and paid Rs.13,50,000/-. Once the accused admits issuance of cheque, the presumption under Sections 118 and 139 of the NIA would operate in favour of the holder of the same as if he received it for discharge of legally enforceable liability/debt, unless contrary is proved.

3. The question would be whether the accused had discharged the onus on preponderance of probabilities, needs to be scrutinized. More particularly, when the original complainant is no more and his widow had stepped into the shoes of her husband.

4. The submissions made on behalf of the respondent that the Appellate Court should be slow in interfering with the order of acquittal which is supported with the judgment of Hon'ble supreme Court in case of ***Arun Kumar Vs State of Bihar, (2017)6 SCC 765***, is a settled proposition of law, yet this can be ascertained at the time of final hearing of the appeal. It is brought to my notice by the learned Counsel appearing for the applicant that in the impugned judgment the learned trial Court has failed to appreciate the

presumption under Section 118 of the NIA in correct perspective, in the light of the fact that accused had admitted the issuance of cheque.

5. For the aforesaid reasons, special leave is granted. Registry is directed to register the appeal. Appeal is admitted. Learned JMFC, shall take action as per Section 390 of Cr.P.C. Mr. Zeller D'souza, learned Counsel waives notice on behalf of the respondent.

6. Application stands disposed of.

PRITHVIRAJ K. CHAVAN, J.

VN*