

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL MISC. APPLICATION NO. 271 OF 2018
IN
STAMP NUMBER MAIN NO.81 OF 2018

GRAYSON DE JESUS SERRAO ... Applicant

Versus

ANTONIO ERNESTO PEREIRA
AND ANR ... Respondents

Shri C. A. Coutinho, Advocate for the applicant.

Shri Arun De Sa, Advocate for the respondent no.1.

CORAM:- C.V. BHADANG, J.

DATE:- 30th NOVEMBER 2018

P.C:

This is an application for leave to appeal against acquittal.

2. The applicant/ complainant had filed a criminal complaint under Section 138 of the Negotiable Instruments Act (the Act, for short) against the respondent no.1/ accused as a cheque in the sum of Rs.11,75,000/- issued by the first respondent got dishonoured for want of insufficient funds. The learned Magistrate convicted the first respondent, which order has been reversed by the learned Sessions Judge in appeal, on the ground that the amount was allegedly advanced in cash by the applicant in breach of the provisions of Section 269-SS of the Income Tax Act.

3. Shri Coutinho, the learned Counsel for the applicant has placed reliance on the decision of this Court in the case of **Krishna P. Morajkar Vs. Joe Domnic Ferrao and Anr.**; 2013 Cr.L.J. 572 (NOC) Bombay and a later decision in the case of **Jagannath Ganesh Hegde Vs. In depth Entertaining Arts Pvt Ltd & Ors.**; 2017(1) BCR 184, in order to submit that non-compliance with Section 269-SS of the Income Tax Act would not make a debt unenforceable in law.

4. Shri De Sa, the learned Counsel for the first respondent has supported the impugned judgment. It is submitted that the applicant has not shown as to what source he had of income, in order to enable him to advance an amount of Rs.11,75,000/- to the first respondent.

5. On hearing the learned Counsel for the parties, I find that an arguable case arises as to the effect of Section 269-SS of the Income Tax Act, particularly in view of the decisions of this Court in the case of **Jagannath Ganesh Hegde** (supra). In that view of the matter, I find that a case for grant of leave is made out. The application is accordingly allowed, granting leave to the applicant to appeal against acquittal. Let the appeal be registered, which shall be treated as admitted.

6. The learned Magistrate to take action under Section 390 of Cr.P.C.

SMA

C.V. BHADANG, J.