

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL MISC. APPLICATION NO. 209 OF 2018
IN
STAMP NUMBER MAIN NO. 1974 OF 2018

SHREE DANESHWARI TRADERS, REP. BY
ITS AUT. PARTNER, SHASHIKANT C.
BHUSANNAVAR.,

... Applicant

Versus

MEHABOBY BABUSAB DESUR AND ANR., ... Respondents

Shri A. D. Bhobe and Ms. A. Fernandes, Advocates for the
applicant.
Shri Ryan Da Piedade Menezes, Advocate for the respondent
no.1.

Coram:- C. V. BHADANG, J.

Date:- 10th December 2018

P.C.

This is an application for leave to appeal against acquittal.

2. The applicant is the original complainant, which had filed a complaint under Section 138 of the Negotiable Instruments Act (the Act, for short) against the first respondent for dishonour of a cheque in the sum of Rs.8,50,000/-. According to the applicant, the cheque was issued towards the payment of purchase price of certain goods supplied by the applicant to the first respondent. The learned Magistrate found the first respondent guilty of the offence and convicted him for the offence under Section 138 of the Act, which has been set aside by the learned Sessions Judge in appeal. The learned Sessions Judge has basically gone on the

aspect of the non-registration of the Partnership as on the date of the complaint and has found the defence taken by the first respondent of the cheque being stolen from the shop of the first respondent, to be plausible and probable. The learned Sessions Judge has noted that the first respondent had not disputed the signature on the subject cheque. However, the defence was found to be probable and sufficient to displace the presumption arising under Section 118(a) and Section 139 of the Act and thus, the learned Sessions Judge has acquitted the first respondent.

3. On hearing the learned Counsel for the parties and on perusal of record, I find that the matter requires consideration in as much as there is a document of extract of registration of the Partnership produced on record. The question is whether it is the same Partnership, which had filed the complaint, as contended on behalf of the applicant as there was only reconstitution of the Partnership Firm in the year 2013 or whether it was altogether different firm, which was for the first time formed in the year 2013. In that view of the matter, the application is allowed, granting leave to appeal against acquittal.

4. The appeal shall be registered, which shall be treated as admitted. The learned Magistrate to take action under Section 390 of Cr.P.C.

SMA