

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 63 OF 2017

STATE, THR. PERNEM POLICE STATION,
PERNEM.,

... Petitioner

Versus

NANDKISHOR S. DEVJI AND ANR.,

... Respondents

Shri S.R. Rivankar, Public Prosecutor for the Petitioner.

Shri Jagannath Jayant Mulgaonkar, Advocate for the
Respondents.

Coram:- C. V. BHADANG, J.

Date:- 28th February 2018

P.C:

Heard Shri Rivankar, the learned Public Prosecutor for the petitioner and Shri Mulgaonkar, the learned Counsel for the respondents.

2. The challenge in this criminal revision application is to the order dated 06.04.2017, passed by the learned Sessions Judge at Mapusa in Criminal Revision Application No. 90/2015. By the impugned judgment, the learned Sessions Judge has set aside the order dated 03.11.2015, passed by the learned Magistrate, framing charge against the respondents for the offence punishable under Section 420 read with Section 34 of the Indian Penal Code (IPC, for short). The net result is that the respondents stand discharged of the said offence.

3. The case made out by the complainant was that there is an agreement between the parties, in which, the respondents (second party) had agreed to register a portion admeasuring 67.925 square metres on the ground floor as a guest house, which was supposed to be given on rent and the profit of which, was to be given to the complainant (first party). It was contended that the respondents have committed breach of the said agreement and have cheated the complainant. The learned Magistrate by order dated 03.11.2015, framed a charge against the respondents for the aforesaid offence, which order has been set aside by the learned Sessions Judge.

4. On hearing the learned Counsel for the parties and on perusal of the record, I do not find that any case for interference is made out. Essentially, the dispute arises out of the agreement executed between the parties on 12.04.2008, in which, the respondents had agreed to pay an amount of Rs.50 lakhs to the complainant, in the manner as set out in Clause 4 of the agreement. The learned Sessions Judge has found and to my mind rightly so, that at the highest, it would be a case of breach of contract, where the dispute would be essentially of a civil nature. It is not the case of the complainant that the respondents have given the guest house on rent and are drawing profit of the same and are not depositing the profits in the account of the complainant. It is also not shown

that the intention of the respondents, since inception, was not to abide by the said agreement. It is nowhere shown that the respondents had no intention to abide by the said contract since inception. The learned Sessions Judge after noticing Clause 4 of the agreement has rightly come to the conclusion that at the highest, the complainant has a civil remedy and there is no offence of cheating made out. The impugned judgment does not suffer from any infirmity, so as to require interference in the exercise of the revisional jurisdiction of this Court. The Criminal Revision Application is dismissed.

C. V. BHADANG, J.

EV