

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL MISC. APPLICATION NO. 315 OF 2017**
IN
STAMP NUMBER MAIN NO. 2185 OF 2017

Mrs. Aisha Bi Shaikh ... Applicant

Versus

Mr. Saurabh Lotlikar ... Respondent

Shri Joaquim Godinho, Advocate for the Applicant.

Shri Ashwin D. Bhobe with Ms. Shradha Bhobe, Advocates for the Respondent.

CORAM:- C.V. BHADANG, J.

DATE:- 7th MARCH, 2018

ORAL ORDER:

This is an application for leave to appeal against acquittal.

2. The applicant had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (Act, for short), against the respondent for dishonour of cheque dated 08.12.2014, in the sum of Rs. 3 lakhs, issued in favour of the applicant. A bare perusal of the said cheque shows that it is signed by the respondent as a Director of Lotlikar

Constructions Private Limited. Admittedly, the applicant had neither issued a statutory notice to Lotlikar Constructions Private Limited nor the said Company was made a co-accused in the complaint before the learned Magistrate.

3. The Hon'ble Supreme Court in the case of **Aneeta Hada Vs. M/s Godfather Travels & Tours, (2012) 5 SCC 661** has held that there is a mandatory requirement under Section 141 of the Act to implead the Company as one of the accused and the prosecution, without arraying Company as an accused, is not maintainable.

4. Shri Godinho, the learned Counsel for the applicant tried to overcome the said requirement by submitting that the Company is non-existent. I do not find that any such contention can be accepted. It was for the applicant to issue the statutory notice to the respondent as well as the Company and the applicant ought to have filed the complaint, arraying the Company as the co-accused and only during the course of the trial, it could have come on record that the Company is non-existent. Once, it has come on record that the respondent has signed the cheque in his capacity as a Director, it cannot be contended that the Company is non-existent. In any event, in

view of the judgment in the case of **Aneeta Hada** (supra), I do not find that any exception can be taken to the impugned judgment, acquitting the respondent of the offence punishable under Section 138 of the Act. The view taken by the learned Magistrate is a plausible view, which does not require any interference. No case for grant of leave to appeal against acquittal is made out. The criminal miscellaneous application is dismissed. Registration of Stamp No. 2185/2017 stands refused.

C.V. BHADANG, J.

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