

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL MISC. APPLICATION NO. 283 OF 2017
IN
STAMP NUMBER MAIN NO. 2996 OF 2017

SANDEEP PRABHU., ... Applicant

Versus

RAKESH KRISHNAMURTHY TALKAL AND
ANR., ... Respondents

Shri Ashwin D. Bhobe and Ms. S. Bhobe, Advocates for the
applicant.

Ms. Gautami Kamat, Advocate for the respondent no.1.

Coram:- C. V. BHADANG, J.

Date:- 19th March 2018

P.C.

This is an application for leave to appeal against acquittal.

2. The learned Magistrate had convicted the respondent no.1 for the offence punishable under Section 138 of the Negotiable Instruments Act, (the Act, for short), which has been set aside by the learned Sessions Judge in appeal on the sole ground that the respondent no.1 has not established that he is the Proprietor of M/s. G. P. Traders. The learned Sessions Judge while acquitting the respondent no.1, has placed reliance on the decision of the Supreme Court in the case of MILIND SHRIPAD

CHANDURKAR VS. KALIM M. KHAN AND ANR.; 2011(4) SCC 275, in which the Supreme Court found that there was no evidence to show that the appellant was the sole proprietor of the Firm. Prima facie, in this case, the complaint is filed in the name of the Proprietorship Concern through Mr. Sandip Prabhu as the Proprietor. Although in the Chief-Examination, it is not stated that Mr. Prabhu is the sole Proprietor, in the cross-examination, it has come that Mr. Prabhu was running M/s. G. P. Traders. Admittedly, in the present case, no reply was filed to the statutory notice, raising a dispute that Mr. Prabhu is not the sole proprietor of the Firm. The learned Sessions Judge has held all the other requirements to be satisfied for an offence under Section 138 of the Act in favour of the applicant.

3. It is pointed out by the learned Counsel for the respondent no.1 that in the affidavit-in-evidence, neither the respondent no.1 said anything about he being the Proprietor of the Firm nor any material in that regard is produced on record and the copy of the affidavit-in-evidence is also not produced.

4. It was submitted by the learned Counsel for the respondent no.1 that the statutory notice was not received by the respondent no.1. However, in this regard, there is contrary finding recorded by the learned Sessions Judge and he has not accepted this contention raised on behalf of the respondent no.1.

5. Considering the overall circumstances, I find that the matter needs consideration and a case for grant of leave is made out.
6. In the result, the application is allowed. Let the Criminal Appeal be registered, which shall be treated as admitted.
7. The learned Counsel for the respondent no.1 waives service.
8. The learned Magistrate to take action under Section 390 of Cr.P.C.

C. V. BHADANG, J.

SMA