

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 147 OF 2017

DR. SHYAM MURTI GUPTA., ... Appellant

Versus

ELI FURTADO., ... Respondent

Mr. Terence Vaz, Advocate for the appellant.

Coram:- C. V. BHADANG, J.

Date:- 9th January 2018

P.C.

Heard the learned Counsel for the appellant.

2. The challenge in this appeal is to the order dated 12/10/2017 (incorrectly mentioned as 12/04/2017 in the title), passed by the learned Trial Court below application Exh.7-D. By the impugned order, the learned Trial Court, while allowing the application Exh.7-D, filed by the respondent, has rejected the plaint under Order VII, Rule 11(d) of the Code of Civil Procedure (the Code, for short).

3. The brief facts are that the respondent had filed a complaint against the petitioner under Section 138 of the Negotiable Instruments Act, in which the learned Magistrate had convicted the petitioner on 29/11/2013. The petitioner challenged the same in appeal before the learned Sessions Judge being Criminal Appeal No.132/2013. The learned Sessions Judge allowed the appeal and acquitted the petitioner vide judgment and order

dated 28/05/2015. Indisputably, the respondent filed Criminal Misc. Application before this Court for leave to appeal against acquittal, which was dismissed by this Court on 26/04/2016. The petitioner filed a suit against the respondent for malicious prosecution on 01/03/2017. The cause of action as shown in para 66 of the plaint is on 26/04/2016 i.e. the dismissal of the application for leave to appeal against acquittal. The respondent filed an application Exh.7-D before the learned Trial Court under Order VII, Rule 11(d) of the Code, claiming that the plaint was barred by limitation and thus, was liable to be rejected.

4. It was contended on behalf of the petitioner that the cause of action would accrue on 26/04/2016, when the prosecution was "otherwise terminated" and not from the date of original acquittal i.e. from 28/05/2015. Reliance was placed on the phraseology used in Article 74 of the Limitation Act, in order to submit that not only the date of acquittal, but the date on which the prosecution was 'otherwise terminated', would also be relevant for determining the period of limitation.

5. The learned Trial Court, on hearing the parties and on placing reliance on two decisions of this Court in the case of VASANTRAO BAPURAO CHIDDARWALA VS. RAGHUNATHRAO ANANTRAO DESHMUKH ANOTHER; 1990 0 MhLJ 491 and MALABAI W/O PRALHAD BHOYAR VS. SUMANBAI W/O NARAYANRAO DUBEY; 2007 1 ALLMR 102, came to the conclusion that the period of limitation

would commence from the order of acquittal and not from the date of rejection of the application for leave to appeal against acquittal. The learned Trial Court found that the suit having been filed beyond the period of one year from 28/05/2015, was clearly barred by limitation. In that view of the matter, the application was allowed and the plaint has been rejected.

6. It is contended by the learned Counsel for the petitioner that Article 74 of the Limitation Act would show that the period of limitation would commence not only from the date of acquittal but also from the date on which the prosecution was otherwise terminated. It is submitted that the prosecution can be said to be otherwise terminated in this case, when the application for leave to appeal against acquittal was dismissed.

7. I have considered the circumstances and the submissions made and it is not possible to accept the contention as raised on behalf of the appellant.

8. This Court in the case of VASANTRAO CHIDDARWAR (supra) and MALABAI BHOYAR (supra) has taken a view that the period of limitation would commence from the date of the original order of acquittal. It has also been held that unlike an order of conviction, the order of acquittal takes effect immediately in as much as there is no absolute right of appeal to the original complainant to challenge the acquittal, unless leave is obtained. It would be significant to note that under Section 9 of the Limitation Act, there is continuous running of limitation

and once the order of acquittal is passed, limitation would start running, which cannot be interrupted on account of the fact that the complainant challenges the order of acquittal. The learned Counsel for the petitioner also placed reliance on the decisions of the M.P. High Court in the case of S. D. TIWARI VS. GURMEET SINGH @ BILLU AND ANOTHER; 2008 0 SUPREME (MP) 1160 and that of Rajasthan High Court in the case of RAMDHAN VS. KANMAL; 1981 0 SUPREME (RAJ) 11, which take a contrary view. However, the learned Magistrate, in my considered view, is justified in holding that the decisions of this Court in the case of VASANTRAO CHIDDARWAR (supra) and MALABAI BHOYAR (supra) would apply with precedence. I am in respectful agreement with the view as expressed in the aforesaid cases. The impugned order does not suffer from any infirmity so as to require interference. The appeal is without any merit and is, accordingly, dismissed.

C. V. BHADANG, J.

SMA