

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION

NOS. 7, 8, 9, 11 & 16 OF 2018

IN

STAMP NUMBER MAIN NOS. 4092, 4096, 4100,
4094 & 4098 OF 2017

Ivan Singh ... Applicant

Versus

Shivaji Tukaram Naik & Anr. ... Respondent

Shri S. M. Singbal with Ms. Deevya Volvaikar, Advocates for the Applicant.

Shri Dinesh E. Naik with Shri Anant C. Panshekar, Advocates for the Respondent.

CORAM:- C.V. BHADANG, J.

DATE:- 7th MARCH, 2018

ORAL ORDER:

All these applications for leave to appeal against acquittal, are between the same parties and involve common and connected issues. As such, they are being disposed of by this common order.

2. There was an agreement dated 31.12.2010 between the applicant and the respondent no. 1, under which, an amount of Rs.42 lakhs was given by the applicant to the

respondent no. 1, which is styled as a “private loan”. That amount was advanced for purchase of three Tipper Trucks, as per the terms of the agreement, the loan was an interest free loan and the respondent no. 1 had issued 43 post dated cheques, in favour of the applicant, towards purported repayment of the loan, out of which, five cheques got dishonoured for want of sufficient funds. This led the applicant to file five complaints under Section 138 of the Negotiable Instruments Act, 1881 (Act, for short) against the respondent no. 1.

3. Before the learned Magistrate, it was contended on behalf of the respondent no. 1 that the respondent no. 1 has rendered services of transport of ore to the applicant and thus, the loan stood repaid in kind. Secondly, it was contended that the cheque was issued by way of security and not towards discharge of any legally enforceable debt.

The learned Magistrate accepted the defence and acquitted the respondent no. 1, by judgment and order dated 30.10.2017.

4. I have heard Shri Singbal, the learned Counsel for the applicant and Shri Naik, the learned Counsel for the

respondent no. 1. With the assistance of the learned Counsel for the parties, I have gone through the evidence, the agreement and also the impugned judgment.

5. *Prima facie*, at this stage, it does appear that in the agreement, there is no recital that the amount could be repaid by rendering service to the applicant. Furthermore, the respondent no. 1 claims that he maintains Log Books in respect of the three Tipper Trucks, which were not produced before the learned Magistrate. *Prima facie*, it further appears from Clause No. 9 of the agreement that the cheques were not taken as security and there was lien of the applicant on the three Tipper Trucks, which were purchased by the respondent no. 1, out of the “private loan”.

6. On behalf of the respondent no. 1, reliance is placed on the decision of this Court in the case of **Umakant Govind Parab Vs. M.R. Tidke, 2013 ALL MR (Cri) 203**. In that case, there was a dispute about the advancement of loan of Rs.7 lakhs by the complainant to the accused and the complainant had failed to mention any specific date on which, the loan amount was advanced. Principally, on this ground, this Court had refused to grant leave. The case of **Umakant**

Govind Parab (supra) is clearly distinguishable on facts, as in the present case, it is nowhere disputed that the applicant had given loan of Rs.42 lakhs to the respondent no. 1.

7. On hearing the learned Counsel for the parties, I find that the findings recorded by the learned Magistrate on the aspect of repayment of loan in the form of services rendered to the applicant by the respondent no. 1 and as to whether, the subject cheques were issued as security or whether, they were issued in discharge of a liability, require consideration.

8. In such circumstances, the Criminal Miscellaneous Applications, are allowed. The Criminal Appeals be registered, which shall be treated as Admitted. Advocate Naik, waives service on behalf of respondent no. 1. The learned Magistrate to take action under Section 390 of Cr.P.C. The Criminal Appeals to be heard along with Criminal Appeal No. 69/2014.

C.V. BHADANG, J.