IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL MISC. APPLICATION NO. 17 OF 2019.
IN
STAMP NUMBER MAIN NO.1264 OF 2018.

PGS Enterprises ... Applicant.

Versus

Sandesh Dnyaneshwar Kerkar and anr. ... Respondents.

Mr. Parag Rao, Advocate for the applicant.
Mr. J. Mulgaonkar, Advocate for the respondent no.1.

Coram:- PRITHVIRAJ K. CHAVAN, J.
Date- 5th November, 2019.

ORDER

By this application, the applicant who is the original complainant in a cheque bounce case had sought special leave to appeal being aggrieved with the impugned judgment of acquittal passed by JMFC Mapusa in Criminal Case No.OA/222/NIA/2013/A.

2. Briefly stated the facts are that the respondent no.1 approached the applicant asking for an amount of ₹3,00,000/- (Rupees three lakhs only) for the purpose of his brother's marriage. The

respondent no.1 being well acquainted with the applicant in connection with the business of the applicant in the name and style M/s. Prarthana Grocery Shop, the applicant lent ₹3,00,000/- (Rupees three lakhs only) to the respondent no.1. Respondent no.1 agreed to repay the amount within a period of two months. Despite expiry of two months, the respondent no.1 did not pay the amount. However, on 21.6.2013, the respondent no.1 issued a cheque for an amount of ₹2,70,000/- (Rupees two lakhs seventy only) drawn on Union Bank of India bearing no.028858. On presentation the cheque was dishonoured on the ground of "insufficient funds". A Legal notice dated 2.7.2013 issued to the respondent no.1 was neither complied with nor replied. Aggrieved, the applicant filed a complaint against the respondent no.1 under Section 138 of the Negotiable Instruments Act.

3. Learned Magistrate after recording the evidence of the witnesses acquitted the respondent no.1 of the offence.

4. At the outset Mr. Rao, learned Counsel for the applicant took

me through the impugned judgment as well as the evidence on record. He drew my attention to the impugned judgment wherein the learned Magistrate has observed that the applicant has suppressed certain earlier transactions, which according to the learned Counsel are irrelevant. It is further submitted that findings arrived at by the Magistrate that the respondent succeeded in rebutting the presumption under Section 139 of the Negotiable Instruments Act is illegal, as the same are perverse. It would be interesting to read the cross examination of PW1 on behalf of the respondent.

> *"It is not true to suggest that out of the said loan the accused issued to me a cheque bearing no.2028843 on Union Bank Mapusa in the name of Dattatray Enterprises for the sum of Rs.1 lakh and that the said amount of Rs.1 lakh was collected in my account on 29.6.2012. I say that the account Dattatray Enterprises is not maintained by me. I admit that on 16.5.2013 the accused paid me Rs.50,000/- by way of cheque bearing no.2039021 drawn on Union Bank Mapusa branch in favour of M/s. P.G.S. Enterprises. However I say that this amount was paid towards the different transaction. I say that the said amount of Rs.50,000/- was borrowed by the accused from me on 31.3.2012. I have paid various sums of money to the accused on number of occasions. However, the accused have repaid me all the money borrowed by him from me.*
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> *It is not true to suggest that the accused had taken a loan from me of Rs.2,50,000/- and repaid the same to me."*

5. The cross further reveals that except an amount of ₹2,98,000/-(Rupees two lakhs ninety eight thousand only) reflected against the entry dated 31.3.2012 rest of the amount has been repaid by the accused to the complainant. It seems that the learned Magistrate has failed to appreciate the evidence in its correct perspective on the point of rebuttal of the presumption. There are sufficient grounds to grant leave to appeal. Observation of the learned Trial Court as to whether it was a legally enforceable debt or other liability also needs to be scrutinized in the light of the evidence on record.

6. For the reasons aforesaid, special leave to appeal is granted. Registry to register the appeal. Application stands disposed of.

PRITHVIRAJ K. CHAVAN, J.

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