

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL MISC. APPLICATION NO. 320 OF 2018
IN
STAMP NUMBER MAIN NO. 2271 OF 2018

HANUMANT G. GAWANDI., ... Applicant

Versus

RAJU DSOUZA AND ANR., ... Respondents

Ms. Maria Caroline Collasso, Advocate for the Applicant.

Mr. Pranay A Kamat, Advocate for Respondent No.1.

Coram:- PRITHVIRAJ K. CHAVAN, J.

Date:- 26th June 2019

P.C.

The respondent/accused came to be acquitted by the learned Judicial Magistrate First Class, Pernem for the offence punishable under Section 138 of the Negotiable Instrument Act (N.I.Act) by judgment and order dated 27.02.2018 against which the original complainant has preferred this appeal, inter alia, a Special Leave to Appeal under Section 378(4) Cr.P.C.

2. I have heard the learned Counsel for the applicant. My attention is drawn to para 16 of the impugned judgment wherein the learned Magistrate observed that the agreement in question did not reveal that the complainant had infact invested Rs.20

lakhs in the business of "My TV" and that the agreement fortifies the contention of the accused that even on the date of execution of the agreement, no amount was invested by the complainant.

3. The learned Counsel for the respondent objects granting leave to appeal only on the ground that the complainant/applicant is an advocate and there is no material on record in fact to show that he had paid Rs.20 lakhs to the accused.

4. Clause 8 of the said agreement indicates that the complainant who is partner No. 3 made a life time investment and was not required to invest any more amount in the partnership and the liability of the complainant was only to the extent of the capital investment of Rs.20 lakhs.

5. Clause 19 of the said agreement further reveals that if the business discontinued for a period of seven days, then the complainant would be liable to refund of the capital investment with compound interest at the rate of 2% per month from the date of its discontinuation of said television channel.

6. The learned Trial Court in the impugned judgment at para 19 has also specifically observed that the complainant has admitted the recitals of the agreement. However, there was no other document. The agreement itself reveals payment of Rs.20 lakhs

to the accused which also has been substantiated during the cross examination of the complainant by the accused. Thus, prima facie it can be safely inferred that there was a legally enforceable liability and therefore, the appeal needs consideration.

7. Leave is granted.

8. The learned Judicial Magistrate, First Class, Pernem shall take steps as per Section 390 of Cr.P.C.

9. The appeal be registered. The application stands disposed of.

PRITHVIRAJ K. CHAVAN, J.

MF/-