

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 41 OF 2019

IN

STAMP NUMBER MAIN NO. 2686 OF 2018

RAJKUMAR D. KAUTHANKAR ... Applicant
Versus
SANTOSH VITHOBA TANDEL AND ANR. ... Respondents

Shri Prasheen Lotlikar, Advocate for the applicant.

None for the respondent No.1.

Shri Mahesh Amonkar, Special Public Prosecutor for the respondent No.2.

Coram:- NUTAN D. SARDESSAI, J.

Date:- 1st April 2019

P.C.:

Heard Shri P. Lotlikar, learned Advocate for the applicant.

2. None for the respondent No.1 despite due opportunity time and again.

3. It was the contention of Shri Lotlikar, learned Advocate that the applicant had advanced a friendly loan of ₹4,00,000/- to the respondents on 1/11/2016 in connection with his fishing business and towards its repayment, the respondent No.1 had issued a post dated cheque bearing No.944754 dated 01/11/2016 drawn on the SBI, Shiroda Branch. The said cheque when presented to the bank had been returned dishonoured with remark "Refer to Drawer". The respondent no.1 had received the notice of dishonour of the cheque and in reply thereto had not seriously disputed the issuance of the cheque though he has taken a plea

that it was issued as a security towards the losses which would be suffered by the applicant in the fishing business. These aspects of the matter were not considered by the JMFC who had also failed to take into account the fact that the respondent has not stepped in the witness box to prove his case in defence. The applicant on the face of the records has a good case to succeed on merits.

4. In view thereof leave to appeal is granted. The application accordingly stands disposed off. The Registry to register the appeal.

5. The Magistrate to take action under Section 390 CrPC.

NUTAN D. SARDESSAI, J.

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