



IN THE HIGH COURT OF BOMBAY AT GOA

LD-VC-CRI-21-2020 (CRMA)
IN
LD-VC-CRI-20-2020(CRIA)

Shri Naresh Shakya

... Appellant

Versus

Shri Shaikh Hamid Mohammed

...Respondent.

Shri Jatin Ramaiya, Advocate for the Petitioner.

Coram : Nutan D. Sardesai. J.

Dated :20th July, 2020

P.C.:

Heard Shri Jatin Ramaiya, learned Advocate for the Appellant. It was his contention that the learned Judicial Magistrate completely overlooked the fact that the complainant had produced all the relevant and material documents on record during the course of his examination despite which the learned Judicial Magistrate did not consider the same in a proper perspective and held against him. It was further his contention that the learned Judicial Magistrate had laid undue emphasis on the fact that the

respondent had replied to the legal notice which was issued to him and taking a plea that the cheque was lost/misplaced by him. However, it was lost on the learned Judicial Magistrate that the respondent had neither denied the cheque being issued by him nor writing of the name of the payee on the cheque which was a material factor in favour of the complainant. Therefore he had clearly discharged the burden cast on him in view of the presumption available in his favour in terms of Section 118 and 139 of the Negotiable Instruments Act, 1881 (Act for short). It was a fit case to grant leave and to admit the appeal.

2. i have heard Shri J. Ramaiya, learned Advocate for the appellant and also considered the grounds urged by him apart from the findings of the learned Judicial Magistrate holding against him on both these counts. At the outset, it appears that the learned Judicial Magistrate fell in error in appreciating the requirements of the complaint under Section 138 of the N.I.Act and the presumption available in favour of the appellant/complainant in terms of Sections 118 and 139 of the Act. The appellant has clearly made out a case to succeed on merits. In view thereof, application for leave to appeal is allowed and the appeal is admitted.

3. The learned Judicial Magistrate, First Class to comply with the predicates of Section 390 Cr.P.C.

Nutan D. Sardessai, J.

MF/-

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