

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL MISC. APPLICATION NO.177 OF 2019
IN
STAMP NUMBER MAIN NO.2226 OF 2019

Mr. Mariano Lourenco Baretto ... Applicant

Versus

Mr. Anthony M. Barreto ... Respondent

Mr. D.R. Vernekar, Advocate for the Applicant.
Mr. C.A. Coutinho, Advocate for the Respondent.

Coram :- M.S. JAWALKAR, J.

Date :- 17th August, 2021

ORAL ORDER :

By this application, the applicant, who is the original complainant in a cheque bounce case, has sought special leave to appeal being aggrieved with the impugned judgment dated 20.04.2019 of acquittal passed by the learned Additional Sessions Judge-1, South Goa, Margao in Criminal Appeal No.28/2018.

2. Briefly stated the facts are that the accused had approached the complainant asking for an amount of ₹5,40,000/- as a friendly loan as the accused was in some urgent need of money. The complainant, in good faith, advanced the hand loan of ₹5,40,000/- to the accused. Accused promised to repay the said amount to the complainant within two months thereof. Due to the failure of the accused to repay

the said amount, even after expiry of three months, the complainant orally demanded the same amount from the accused. After repeated requests the accused issued two cheques in discharge of his debt and liability due to the complainant. The said cheques when deposited by the complainant in the State Bank of India, Canacona, Goa, were returned back with the remark "funds insufficient". A legal notice dated 03.10.2013 was issued to the accused through advocate of the complainant demanding payment of the said amount within 15 days from the receipt of the notice. Failure of the accused to make the said payment within the stipulated time, the complainant had filed complaint under Section 138 of the Negotiable Instrument Act before the Judicial Magistrate First Class at Canacona.

3. Learned Magistrate after recording the evidence of the witnesses acquitted the respondent of the offence punishable under Section 138 of the Negotiable Instruments Act.

4. Learned Counsel Mr. D. Vernker for the complainant has taken me through the impugned Judgment and order as well as the evidence on record. He drew my attention to the impugned judgment wherein the learned appellate Court has held that the observations of the learned trial Judge on which the judgment

of conviction was based were erroneous and that the learned trial Judge failed to appreciate the fact that the accused had raised a serious question as to the financial capacity of the complainant to advance a sum of ₹5,40,000/- to the accused and that the evidence of the complainant, as discussed earlier, brought out that though the complainant did not have the capability, he had borrowed money from his brother, sister and PW2, which contention the complainant had failed to prove. He further contends that the learned appellate Court arrived at a wrong conclusion that the evidence of PW2 was full of inconsistencies and therefore not reliable. On such and other grounds the learned Counsel for the complainant prays that the application for special leave to appeal be granted.

5. On the other hand, Mr. C.A. Coutinho, learned Counsel for the accused submitted that the complainant failed to prove that he had the financial capability to advance an amount of ₹5,40,000/-. The learned counsel submitted that as per the complainant he had borrowed the said amount from his brother, sister and PW2 but neither the brother nor the sister were examined by the complainant nor did the complainant produce any evidence to corroborate the fact that they had advanced the said amounts to the complainant. The learned Counsel, therefore, submits that there is no error in the judgment of the

appellate Court and the application deserves to be dismissed.

6. I have heard the learned Counsel for the parties and gone through the impugned judgment so also the evidence on record. 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.

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

M.S. JAWALKAR, J.

NH

NITI K
HALDANKAR

Digitally signed by
NITI K HALDANKAR
Date: 2021.08.26
17:01:24 +05'30'