

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL MISC. APPLICATION NO. 264 OF 2019
IN
STAMP NUMBER MAIN NO.3306 OF 2019

Mineiro Ferro Asia

..... Applicant

V e r s u s

Sayyad Minuddin Qadri & anr.

..... Respondents

Mr. A. D. Bhobe and Mr. Chirag Angle, Advocates for the Applicant.

Coram :- M. S. JAWALKAR, J.
Date : 19th January, 2021

P.C.

Heard Mr. Bhobe, learned Counsel for the applicant.

2. In spite of service, respondent no.1 chooses to remain absent.

Therefore, application taken up for arguments.

3. The present leave application is filed to seek leave to file appeal which was preferred being aggrieved by the order dated 25.07.2019 passed by the learned J.M.F.C. 'A' Court at Vasco da Gama in Criminal Case No.20/OA/NIA/2016/A dismissing the complaint and discharged the respondent no.1.

4. The brief facts appears that the respondent no.1 had signed a Purchase and Sale Contract on 21.08.2012 for supply of Iron Ore. That, in terms of the said contract, the applicant had paid a total amount of ₹12,00,000/- i.e. ₹7,00,000/- by cheque and ₹5,00,000/- by cash and respondent no.1 agreed to return the said amount in the event, the respondent no.1 was unable to supply the Iron Ore and had issued five cheques to applicant. As Respondent no.1 failed to supply the Iron ore, the applicant presented five cheques. The said cheques upon being presented for payment, were returned dishonoured with endorsement "funds insufficient". Demand notice was given and as no payment was made, complaint came to be filed.

5. The learned Judge has taken cognizance of the complaint on 26.07.2016 and issued process against the respondent no.1. As respondent no.1 was avoiding service, he was served by paper publication. On failure to appear, NBW was issued and the matter was thereafter adjourned. From time to time, NBW returned unexecuted. On 14.03.2019, learned Advocate as well as the applicant were absent and Judge adjourned the matter on 04.05.2019. Then, on 25.07.2019, in view of the absence of the applicant and his Advocate, the learned Judge proceeded under Section 256

Cr.P.C. and dismissed the complaint and discharged the respondent. It is submitted by learned Counsel for the applicant that the applicant was regularly attending the matter and also his Counsel submitted exemption application if or for any reason, the applicant is unable to attend the Court. Inadvertently, Advocate Shri Suraj Naik did not enter the next date on 28.01.2019 in his dairy which was 14.03.2019 as a result, he was not present on subsequent dates also i.e. 04.05.2019 and 25.07.2019 and impugned order came to be passed. It is also the case of the applicant that Advocate informed him that the presence of the applicant was not required as the respondent no.1 had not appeared in the matter and the NBW issued against the respondent no.1 were not executed. In view thereof, he also did not contact his Advocate in between these dates as he bonafidely believed that as and when the applicant's presence was required, his Advocate would inform him.

6. In my considered opinion, this needs consideration and there is force in the contention raised by the learned Counsel for the applicant. Applicant also placed on record Roznama of the proceeding which supports contention of applicant. Accordingly, I proceed to pass the following :

ORDER

The application is allowed.

Leave to appeal is granted.

Appeal is admitted for hearing on merits. Notice of admission to be served on the respondents.

M. S. JAWALKAR, J

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