

In The High Court Of Bombay At Goa

Criminal Appeal No. 54 Of 2010

Judgment Date:

13-09-2012

Anant Bondre

..Petitioner

Alfred David Fernandes & Another

..Respondent

Bench :

{ HON'BLE MR. JUSTICE A.P. LAVANDE }

Citation :

LQ 2012 HC 1399

Judgment

Oral Judgment:

Heard Mr. G. Teles, learned Advocate for appellant, Mr. J. Godinho, learned Advocate for respondent no.1 and Mrs. M. Pinto, learned Public Prosecutor for respondent no. 2.

2. By this appeal, the appellant challenges judgment and order dated 6.2.2010 passed by Judicial Magistrate First Class, Margao in Criminal Case no. 1117/OA/NI/05/D by which respondent no.1 has been acquitted of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 ('the Act' for short). Respondent no.1 was prosecuted for commission of offence punishable under Section 138 of the Act on account of dishonour of cheque dated 20.4.2005 for Rs.5,00,000/-.

3. The Judicial Magistrate by the impugned Judgment and order has acquitted the accused for the said offence.

4. Although several contentions have been raised by Mr. Teles on behalf of the appellant, it is not necessary for me to consider the same inasmuch as the appeal is liable to be disposed of on very short point.

5. In paragraph 34 of the judgment, the learned Magistrate has referred to the judgment of the Apex Court in the case of Krishna Bhat Vs. Dattatraya G. Hegde, 2008 AIAR (Criminal) 151, in which Apex Court held that Section 139 of the Act merely raises a presumption in regard to the second aspect of the matter and existence of legally recoverable debt is not a matter of presumption under Section 138 of the Act. Learned Magistrate thereafter proceeded to analyse the evidence in the light of the ratio laid down by the judgment of the Apex Court in the case of Krishna Janardhan Bhat (supra). However three Judge judgment of the Apex Court in the case of RangappaV. Mohan, AIR 2010 SCC 1898 has held that the above observations of the Apex Court in the case of Krishna Janaradhan Bhat (supra) are not correct.

6. In view of the above legal position, learned counsel appearing for the appellant/complainant submitted that it would be just and proper to quash and set aside the order of acquittal and remand the matter to the Magistrate to appreciate the evidence led by the complainant as well as the accused in the light of the law laid down by the Apex Court in the case of Rangappa(supra).

7. Mr. J. Godinho, learned counsel appearing for respondent no.1/accused submitted that he has no objection if the matter is remanded to learned Magistrate.

8. I find merit in the submission made by Mr. Teles on behalf of the appellant/complainant and the concession made by Mr. Godinho on behalf of respondent no.1/accused. Since the entire judgment appears to have proceeded on the basis of the ratio laid down in the case of Krishna Janardhan Bhat (supra) in so far as presumption available under Section 139 of the Act, I am of the considered opinion that it would be just and proper to quash and set aside the judgment and order of acquittal and remand the matter to learned Magistrate for passing fresh judgment in the light of the law laid down by the Apex Court in the case of Rangappa(supra).

9. In the result therefore, the impugned judgment and order dated 6.2.2010 passed by learned Judicial Magistrate First Class, Margao in Criminal Case No. 1117/OA/NI/05/D is quashed and set aside and the matter is remanded to learned Judicial Magistrate, First Class, Margao for fresh decision. Learned Magistrate shall dispose of Criminal Case No. 1117/OA/NI/05/D in the light of the law laid down by the Apex Court in the case of Rangappa(supra) after giving an opportunity of being heard to the complainant and the accused in accordance with law.

10. The Complainant and the accused shall appear before learned Magisterial on 15.10.2012 at 10.00a.m.

11. Mr. Godinho states that liberty be granted to the accused to make an application to appear through his Advocate. If any such application is made by the accused to appear through an Advocate, the learned Magistrate shall decide the same in accordance with law. Learned Magistrate shall dispose of Criminal Case no. 1117/OA/NI/05/D expeditiously and in any case on or before 31.12.2012.

12. It is made clear that I have not expressed any opinion on the merits of the rival claims and all the contentions of the parties are kept open.

13. Appeal stands disposed of.