

CRIMINAL MISCELLANEOUS APPLICATION NO. 26 OF 2003.

Eastern International Hotels
Ltd., a Company incorporated
under the Companies Act, 1956
and represented by Shri Yatin
Chodnekar, c/o Majorda Beach
Resort, Majorda, Goa.

... Applicant.

Versus

1. Mr. Rafique Mohamad Shaikh,
73, Sukoobat, Perseraulim,
Colva, Goa.
2. State of Goa through P.P.,
Panaji, Goa.

... Respondents.

Mr. J. Godinho, Advocate for the Applicant.

Mr. S.D. Padiyar, Advocate for the Respondent No.1.

Coram : P.V. HARDAS, J.

Date : 24th April 2003.

ORAL ORDER.

The complainant/present applicant, being aggrieved by the acquittal of the respondent no. 1 for an offence punishable under Section 138 of the Negotiable Instruments Act, passed by the Judicial Magistrate, First Class, Margao, in Private Criminal Case No. 569/N/2000/F, by Judgment, dated 31st November 2002, has filed the present application.

2. The facts giving rise to the institution of the application are set out hereunder:-

(1) The accused/respondent no. 1 had incurred an outstanding of Rs. 1,20,000/- at the Majorda Beach Resort and towards the settlement of the outstanding dues, the accused had issued a cheque drawn on the Bank

of India, Campal, bearing No. 0470417, dated 17th March 2000, for an amount of Rs. 1,20,000/-. On presentation of the said cheque by the complainant, the cheque was returned unpaid on account of insufficiency of funds in the account of the accused. After issuance of the statutory notice and as the accused failed to pay the aforesaid amount to the complainant, the complainant filed the said criminal case. The defence of the respondent no. 1/accused is that he had given a cheque to the complainant since the complainant had assured the accused, who is a Civil Contractor by profession, that he would give him some contracts. It was agreed that the said amount would be adjusted on the accused getting the contract.

3. According to the complainant, the said cheque had been issued by the accused towards the discharge of a debt incurred by him in hosting a party. Admittedly, the cheque issued by the accused is a self cheque. The prosecution in support of its case had examined P.W.1 Yatim Chodnekar, who claims to have been given an authority by the complainant to file the complaint. The notice issued to the accused was returned as unclaimed. In the cross-examination P.W.1 has stated: "It is true that the cheque was not drawn and payable to the complainant. It is true that I am in no way connected with Eastern India Hotels Pvt. Ltd.". In the

cross-examination an omission was brought to the notice of P.W.1 that the nature of the transaction between the accused and the complainant had not been mentioned in the complaint. So also in the notice the nature of the transaction was not stated. He has admitted that there was no written order in respect of the said party hosted by the accused. He has also admitted that after serving food and beverage a bill is issued and a copy of the bill remains with the hotel. He admits that the cheque was not written by the accused in his presence. In further cross-examination he has admitted: "I say that I was not aware of the fact that the cheque amount was towards the payment of food and beverages at the time when the notice was sent, the complaint was filed and I was not aware of the fact till even my statement was recorded 200 of Cr.P.C.". He has further reiterated that he is not in any way connected with the Eastern International Hotel Pvt. Ltd.. P.W.1 has further admitted that he was not aware of the fact that the cheque amount was towards the payment of three parties and that was the reason why he had not stated the said facts at the time of recording of the verification statement and also the statement on 9th May 2001. Admittedly, P.W.1 was not the person to whom the said cheque was alleged to have been handed over by the accused. Even according to him, the said cheque had been handed over to a cashier. P.W.1 states that he is

not in a position to state the name of the cashier to whom the said cheque had been handed over by the accused. He was confronted with his verification statement wherein he has stated that the cheque had been handed over to him by the accused.

4. The other witness examined on behalf of the complainant is P.W.2 Daniel Fernandes, who states that the said cheque was dishonoured on account of insufficient funds. Since this was a self cheque, according to P.W.2 Daniel, the person presenting the cheque has to sign on the reverse of the cheque. P.W.1 had admitted that the cheque does not bear his signature though he claims to have presented the cheque for encashment.

5. The respondent no. 1/accused has examined himself as D.W.1 and has denied that he had organized any party and that he was indebted to the complainant for the aforesaid amount. He has stated that the cheque had been given by him to P.W.1 as P.W.1 had agreed to give him some contracts. This cheque had been given as a security. The cheque was a self cheque. There is nothing in the cross-examination of the respondent no. 1/accused at the instance of the complainant to discredit his version.

6. According to the learned trial Court, in the face of the evidence of the accused, the complainant has miserably failed to establish that the respondent no. 1/accused had owed any money to the complainant on account of any party organized by the accused. The witness P.W.1, examined by the complainant has no personal knowledge about the said party. No bills have been produced. The complainant has not examined any witness to prove that the accused had hosted a party. The said cheque is a self cheque not drawn and payable to the complainant. The entire evidence of the complainant is most dissatisfactory. Anyway this is an appeal against acquittal and the view taken by the learned trial Court on the basis of the evidence does not appear to be perverse and any way such a view is possible on the face of the evidence. In view of this, I am not inclined to interfere with the acquittal and, therefore, the complainant does not merit any leave being granted for filing an appeal. Leave refused. Criminal Miscellaneous Application is, accordingly, dismissed.

(P.V. HARDAS)
JUDGE.

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