

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2015

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

Crl.O.P.No.31077 of 2014
in Crl.A.Sr.No.54907 of 2014

Rajendran

... Petitioner/Complainant

Vs.

Kesavan

... Respondent/Accused

Prayer:- Petition filed under Section 378(4) Cr.P.C. to grant special leave to the petitioner to file the appeal against the judgment of acquittal dated 09.10.2014 in C.C.No.51 of 2013 on the file of the Judicial Magistrate's Court No.III, Salem.

For Petitioner : Mr.R.Thirugnanam

O R D E R

This petition is filed for granting leave to the petitioner to file appeal against the judgment of acquittal dated 09.10.2014 in C.C.No.51 of 2013 on the file of the Judicial Magistrate's Court No.III, Salem.

2.The petitioner as a complainant preferred a private complaint against the respondent/accused stating that on 18.10.2012, the accused intending to purchase the land, has borrowed a sum of Rs.90,00,000/- from the complainant and issued five cheques and agreed that if the accused is not able to purchase the land, he would repay the same. Since the accused has not repaid the same, the complainant presented the cheques for encashment and the same were returned as 'funds insufficient'. So the complainant sent a statutory notice to the accused, even though the accused received the notice, neither he repaid the amount nor he sent any reply. Therefore, the appellant preferred a private complaint against the accused under Sections 138 and 142 of the Negotiable Instruments Act (hereinafter called as "the Act").

3.The trial Court after considering the oral and documentary evidence held that even though the respondent has admitted the issuance of cheques and the signature in the cheques, he has rebutted the presumption by way of examining D.W.1 to D.W.3 and marking Exs.D1 to D3. Further, the trial Court held that the complaint has been lodged by the appellant before the police station only in respect of Rs.8,00,000/- and not with regard to the cheques under Exs.P1 to P5.

4.Learned counsel for the petitioner submitted that D.W.3/accused/respondent himself admitted the issuance of cheques for purchasing the property and hence, the respondent herein has not rebutted the presumption. Therefore, he prayed for granting leave to file the appeal.

5.Heard the learned counsel for the petitioner.

6.The case of the petitioner is that the respondent/accused herein intending to purchase the land, borrowed Rs.90,00,000/- from the complainant on 18.10.2012 and issued five cheques. When the cheques were presented by the appellant for encashment on 12.11.2012, it was returned as 'funds insufficient'. After issuance of statutory notice, the complaint was preferred by the appellant. It is true, though the respondent has admitted the issuance of cheques, he has not issued any reply to the statutory notice.

7.It is well settled dictum of the Apex Court that non issuance of reply is not fatal, if issuance of cheque is admitted by the accused, the complainant is entitled to invoke presumption under Sections 118 and 139 of the Act. The complainant has filed Exs.P1 to P5/cheques to prove that the cheques were issued by the respondent for discharging legally subsisting liability. It is also an admitted fact that presumption under Section 139 of the Act is a rebuttable presumption.

8.Now this Court has to decide whether the respondent/accused has rebutted the presumption by letting evidence or cross-examining P.W.1. On perusal of cross-examination of P.W.1, which finds place in page No.12 of the typed set of papers, it was stated that even though the accused received amount for execution of the sale deed, he did not return the amount, hence, he lodged a complaint against one Sankar and respondent.

9.As per the evidence of D.W.1 and D.W.2, who are police officers, the petitioner has lodged a complaint before the Hasthampatti police station on 05.11.2012 stating that the respondent and one Sankar had borrowed a sum of Rs.8,00,000/- from the petitioner for purchasing the land and on the basis of same, C.S.R.No.223 of 2012 has been registered. On perusal of Ex.D2/copy of CD file, it reveals that the amount due to the petitioner was

mentioned as Rs.6,00,600/- only and since the accused undertakes to pay the same, it was closed and that has been fortified by the evidence of D.W.1 and D.W.2.

10.If really the cheques were issued by the respondent on 18.10.2012, the petitioner may very well disclose the same in the complaint which was lodged by him on 05.11.2012. Furthermore, the amount due by the respondent is mentioned as only Rs.6,00,600/- as per Ex.D2. In such circumstances, the trial Court has rightly held that the presumption under Section 139 of the Act is rebutted by the respondent/accused.

11.Considering the aforestated circumstances of the case, I am of the view, the trial Court considered all the aspects in proper perspective and came to the correct conclusion that the respondent has rebutted the presumption by proving that the cheques were not issued for discharging legally subsisting liability and rightly acquitted the respondent/accused. Hence, I do not find any merits in this petition to grant special leave to prefer appeal and accordingly, the petition stands dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate's Court No.III, Salem.

1 cc to Mr. R.Thirugnanam, Advocate, SR.No.6597

CrI.O.P.No.31077 of 2014

सत्यमेव जयते in CrI.A.Sr.No.54907 of 2014

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