

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2015

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

CrI.O.P.No.31930 of 2014
in CrI.A.No.SR20799 of 2014

M.Jayam

.. Petitioner

vs

Jayaraj

.. Respondent

Prayer:- This Criminal Original Petition is filed under Section 378 (4) Cr.P.C. to grant leave to the petitioner to file an appeal against the judgment of acquittal dated 06.09.2013 passed in S.T.C.No.120 of 2011 on the file of the learned Judicial Magistrate (FTC), Dharmapuri.

For Petitioner : Mr.V.Nicholas

ORDER

This Criminal Original Petition is filed to grant leave to prefer an appeal against the judgment of acquittal acquitting the respondent under Section 138 of Negotiable Instruments Act.

2.Heard the learned counsel appearing for the petitioner and perused the materials available on record.

3.The learned counsel appearing for the petitioner would submit that the Trial Court has acquitted the respondent/accused holding that the petitioner herein has not proved that the cheque has been issued by the respondent/accused for discharging legally subsisting liability. He would submit that on the side of the petitioner, the petitioner examined himself as P.W.1 and P.W.2 is the Bank Manager and Ex.P.1 to P.W.4 were marked and on the side of the respondent/accused, D.W.1 was examined and Ex.D.1 to Ex.D.5 were marked. He would submit that the Trial Court has not considered the evidence of P.W.1 and P.W.2 and the presumption under Section 139 of Negotiable Instruments Act has not been rebutted by the respondent herein and that factum was not considered by the Trial Court. Hence, he prayed for granting leave to prefer an appeal.

4.Considered the rival submissions made by the learned counsel

appearing for the petitioner and perused the typed set of papers.

5.The case of the petitioner is that the respondent borrowed a sum of Rs.4,34,000/- from the petitioner on and to discharge the same, he issued four various post dated cheque to the petitioner. Three cheques for Rs.1,00,000/- each and one cheque for Rs.1,34,000/-. Out of which, one cheque/Ex.P.1 for a sum of Rs.1,34,000/- has been presented for encashment and that has been returned as "Account closed" as per return memo/Ex.P.2. Hence, statutory notice/Ex.P.3 has been issued and it was evidenced from acknowledgment card/Ex.P.4. Even though, the respondent received the statutory notice, neither he repaid the amount nor sent any reply. So, the petitioner was constrained to file a complaint against the respondent.

6.It is an admitted fact that once the issuance of cheque is admitted, the petitioner is entitled to invoke the presumption under Sections 118 and 139 of Negotiable Instruments Act that the cheque has been issued for discharging legally subsisting liability. So, it is a rebuttable presumption and the respondent/accused ought to have rebut the presumption. To rebut the presumption, the respondent examined one Ammar as D.W.1 and marked Ex.D.1 to D.5. Ex.D.1 and Ex.D.2 are the copies of complaint given by the petitioner on 18.01.2008 and 07.01.2008 respectively in Peerkankaranai Police Station. Ex.D.3 is the letter of the complainant to the Inspector of Police, Peerkankaranai Police Station, Ex.D.4 is the letter of the accused and Ex.D.5 is the copies of cheques issued. A perusal of the documents marked would show that the respondent herein has rebutted the presumption. So, once the presumption has been rebutted, the onus is shifted to the petitioner to prove that the cheque has been issued for discharging legally enforceable debt. But he has not proved. Hence, I am of the view that the Trial Court has considered all the aspects in proper perspective and came to the correct conclusion. Therefore, I do not find any merits in the petition and no purpose will be served if the leave is granted.

7.In the result, the Criminal Original Petition is dismissed as devoid of merits. Consequently, CrI.A.No.SR20799 of 2014 is rejected.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

cse

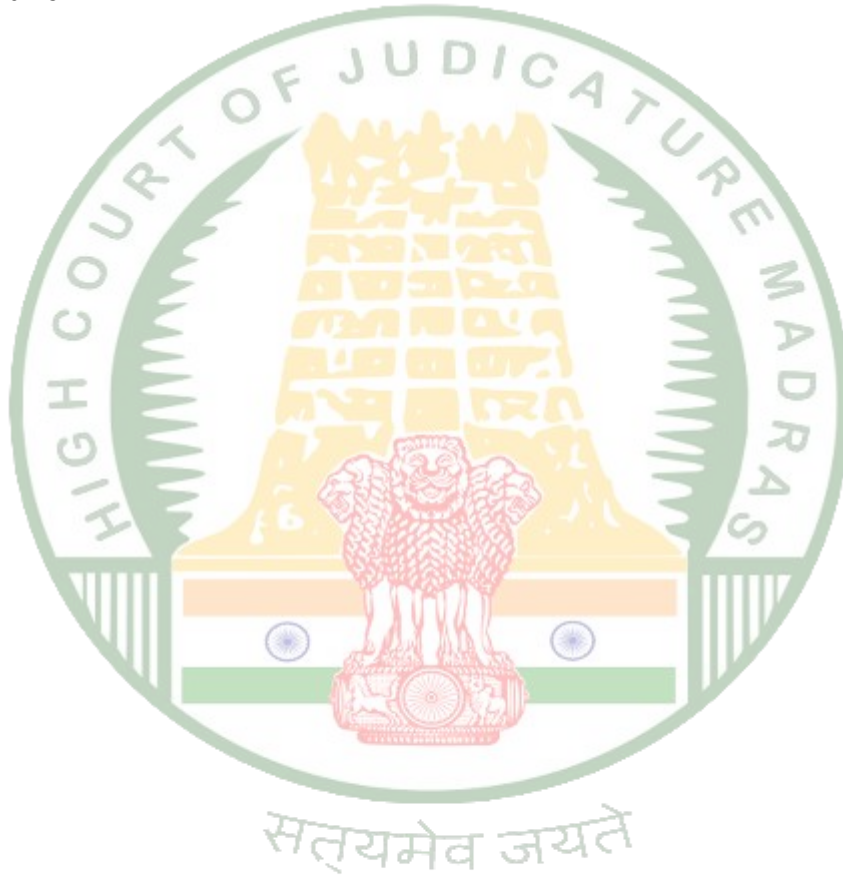
To

The Judicial Magistrate (FTC),
Dharmapuri.

1 cc to Mr. V.Nicholas, Advocate, SR.No.11701

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