

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2015

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

Crl.O.P.No.32884 of 2014
in Crl.A.Sr.No.28880 of 2013

N.Eswaramoorthy ... Petitioner/Complainant

Vs.

Vennilamani 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 21.01.2013 in S.T.C.No.197 of 2012 on the file of the Judicial Magistrate, Fast Track Court No.II, Coimbatore.

For Petitioner : Mr.Ramesh Kumar Chopra

O R D E R

This petition is filed for granting leave to the petitioner to file appeal against the judgment of acquittal dated 21.01.2013 in S.T.C.No.197 of 2012 on the file of the Judicial Magistrate, Fast Track Court No.II, Coimbatore.

2.Learned counsel for the petitioner submits that the trial Court acquitted the respondent/accused stating that the petitioner has not proved that the respondent issued Ex.P1 cheque for discharging his legally subsisting liability. In the complaint and notice itself, it was stated that on 7th December 2008, the respondent borrowed Rs.7,00,000/- and executed promissory note and to discharge the same, he issued Ex.P1 cheque dated 04.02.2009. But the trial Court without considering the same, acquitted the respondent/accused. Hence, he prayed for granting leave to file the appeal.

3.Heard the learned counsel for the petitioner and perused the typed set of papers.

4.This petition is filed to grant leave to the petitioner to file the appeal against the judgment of acquittal passed by the trial Court. In such circumstances, the appellant/complainant has to put forth his case for conviction on the respondent and then he would entitle for leave to file appeal.

5.The case of the petitioner is that the respondent/accused had borrowed Rs.7,00,000/- on 07.12.2008 and executed the promissory note. Since the respondent has not repaid the amount, the petitioner made demands, at that time, the respondent issued Ex.P1 cheque dated 04.02.2009 for Rs.7,00,000/-. When the petitioner presented the cheque for encashment, it was returned as 'funds insufficient' on 13.03.2009. Therefore, the petitioner had sent a statutory notice to the respondent under Section 138(b) of Negotiable Instruments Act. Even though the respondent received the same, neither he sent any reply nor he paid the amount. Hence, the petitioner has preferred a private complaint against the respondent.

6.On perusal of the records, it reveals that even though the petitioner has stated that the respondent had executed the promissory note, he has not filed the same before the Court. In the complaint and legal notice itself, it was stated that on 07.12.2008, the respondent borrowed a sum of Rs.7,00,000/- and executed promissory note and to discharge the same, he issued Ex.P1 cheque. Whereas when the petitioner was in witness box at the time of filing proof affidavit, during his chief-examination, in para-3, he stated that when he demanded repayment of the amount, the accused took back the promissory note and issued a cheque for Rs.7,00,000/- dated 04.02.2009. But during his cross-examination, he stated that promissory note is with him and he is ready to file the document before the Court. So there is contradiction in the complaint as well as the evidence of P.W.1/petitioner. The trial Court in para-13 of the judgment properly appreciated the above aspects in proper manner and rightly acquitted the accused.

7.Considering the aforestated circumstances of the case, I am of the view, the trial Court considered all the aspects in proper perspective 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. Consequently, Crl.A.Sr. is rejected.

Sd/-
Asst.Registrar (AD I)

/true copy/

Sub Asst. Registrar

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To

1.The Judicial Magistrate,
Fast Track Court No.II, Coimbatore.

2.The Public Prosecutor
High Court, Chennai.

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