

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2015

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

Crl.O.P.No.2656 of 2015
in Crl.A.No.SR59249 of 2014

K.S.Constructions,
rep. By its Partner V.Krishnan
S/o.Venkataramappa,
5/4G, Old Krishnagiri Road,
Hosur - 635 109.

.. Petitioner

vs

Harishkumar

.. Respondent

Prayer:- This Criminal Original Petition is filed under Section 378 (3) Cr.P.C. to grant leave to the petitioner to file an appeal against the judgment of acquittal dated 28.11.2014 passed in S.T.C.No.202 of 2013 on the file of the learned Judicial Magistrate (FTC), Hosur.

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 to 142 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 respondent/accused has issued a cheque dated 05.04.2013 for a sum of Rs.10,25,000/- to the petitioner and when it was presented for encashment, it was returned as "Funds Insufficient". Statutory notice under Section 138(b) of Negotiable Instruments Act has been issued. Since the respondent/accused has evaded the notice, the petitioner filed a complaint. The Trial Court after following the procedure has acquitted the respondent/accused stating that the petitioner has not proved that the cheque has been issued for discharging legally subsisting liability. He would further submit that the issuance of cheque and the signature in the cheque has been admitted by the respondent. So, he is entitled to invoke presumption under Sections 118 and 119 of Negotiable Instruments Act. Even

though it is a rebuttable presumption, the respondent/accused has not rebutted the presumption and that factum was not considered by the Trial Court. Hence, he pray to grant leave to prefer an appeal against the respondent.

4. Considered the 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 petitioner and the respondent has entered into an oral agreement for construction of house and the respondent has agreed to pay a total sum of Rs.40,00,000/-. Out of which, Rs.29,75,000/- has been paid by the respondent and for the balance amount of Rs.10,25,000/-, he issued a cheque/Ex.P.1 to the petitioner and when it was presented for encashment, it was returned as "Funds Insufficient". Statutory notice under Section 138 of Negotiable Instruments Act has been issued and since the respondent evaded the notice, the petitioner preferred a complaint. The respondent/accused was examined as D.W.1 and in his evidence, he has categorically admitted the issuance of cheque and the signature in the cheque. As per Sections 118 and 139 of Negotiable Instruments Act, once the issuance of cheque and signature is admitted, he is entitled to invoke the presumption that the cheque has been issued for legally subsisting liability. It is true that the presumption is a rebuttable presumption and the respondent/accused may rebut the presumption either by way of cross-examination of P.W.1 or by examining independent witness. It is also admitted fact that as per the dictum of the Hon'ble Apex Court that the defence need not be proved beyond all reasonable doubt but it must be proved by preponderance of probability.

6. Now, this Court has to decide whether the respondent has probalised the defence by way of cross-examination of P.W.1 and D.W.1 evidence. Here, P.W.1, in his cross examination, has fairly conceded that there is no document to show that there was an agreement entered into between them and has stated that it is an oral agreement. He has further stated that on 09.12.2012, he executed a sale deed in respect of the landed property. He has stated that he received three cheques for Rs.21,00,000/- and that has been filled up and encashed. He has also stated that on 10.12.2012, he received a sum of Rs.5,75,000/- for construction of the building. On 23.01.2013 also, he received a sum of Rs.3,00,000/-. So, the cross examination of P.W.1 itself has rebutted the presumption under Sections 118 and 139 of Negotiable Instruments Act. In such circumstances, the Trial Court has considered all the aspects in proper perspective and came to the correct conclusion. Hence, I am of the view that there is no reason for granting leave to prefer an appeal against the acquittal.

7.In the result, the Criminal Original Petition is dismissed.

cse

-s/d-
Assistant Registrar (CO)
Dt:6/3/2015

True Copy

Sub-Assistant Registrar

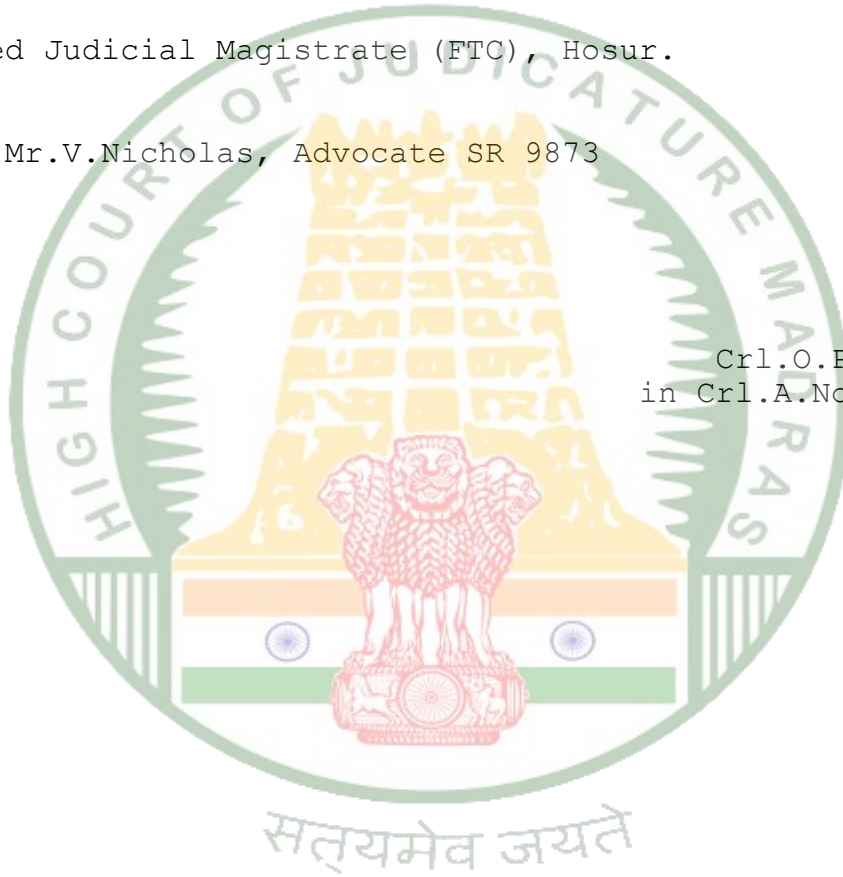
To

The learned Judicial Magistrate (FTC), Hosur.

+ 1 cc to Mr.V.Nicholas, Advocate SR 9873

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