

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2015

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

CrI.O.P.No.26940 of 2014

in

CrI.A.SR.No.47190 of 2014

| Date of Reserving the Judgment | Date of Pronouncing the Judgment |
|--------------------------------|----------------------------------|
| 25.02.2015                     | 02.03.2015                       |

M.Manjunath  
S/o.Muniyappa

.. Petitioner

vs

Gowramma  
W/o.Venkatesh

.. 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 28.08.2014 passed in S.T.C.No.141 of 2013 on the file of the learned Judicial Magistrate, Fast Track Court, Hosur.

For Petitioner : Mr.C. Samivel for  
Ms.N.Sureka

O R D E R

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 the 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 failed to consider the signatures of the respondent in the Ex.P.1/Cheque, dated 19.02.2013 for Rs.1,50,000/- and in the Ex.P.2/Cheque dated 19.02.2013 for Rs.50,000/-. So, the Court ought to have invoked presumption under Section 118 and 139 of the Negotiable Instruments Act, that the

said Cheques were issued for discharging the legally subsisting liability. But the Trial Court without considering the same had acquitted the accused stating that there was a family dispute between the accused and the complainant and so, there is no possibility for issuing those cheques and acquitted the respondent, which is unsustainable. Hence, the learned counsel for the petitioner submits that the petitioner has got a fair chance for success in the appeal and prayed for granting leave to prefer an appeal.

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 during the month of December 2012, the respondent herein had borrowed a sum of Rs.2,00,000/- and agreed to repay the same in the month of February 2013. As the respondent is none other the relative of the petitioner, he lent the money. The respondent issued two cheques, one for Rs.1,50,000/- and another for Rs.50,000/- dated 19.02.2013 in favour of the petitioner. When those cheques were presented for encashment under Ex.P.3/Cheque deposit challan on 19.02.2013, it was returned as 'Account Closed', which was evidenced by Ex.P.4 and Ex.P.5/Return Memos. Hence, notice under Section 138(b) of Negotiable Instruments Act, 1981 has been issued under Ex.P.6 dated 15.03.2013, which was evidenced by Ex.P.7/Acknowledgement card dated 25.03.2013. Since the respondent neither repaid the money nor send any reply, the petitioner herein preferred the complaint.

6. On the other hand, the respondent had raised the plea that she had not issued any cheque. In such circumstances, it is the duty of the petitioner to prove that the Ex.P.1 and Ex.P.2/Cheques had been issued by this respondent. To prove the same, the petitioner examined himself as P.W.1 and also examined P.W.2/James William and also marked Ex.P.8/Account opening application and Ex.P.9/Statement of Account.

7. On perusal of the typed set of papers, it is seen that much prior to the date of issuance of the Cheque, the respondent had filed Ex.D.2/Complaint on 25.09.2012 against the petitioner and others. The respondent had preferred the said complaint in Crime No.88/2012 for the alleged incident said to have been taken place on 23.09.2012 in which the petitioner herein is the first accused and Annaiappa, Muniappa, Pushpa, Kenchamma, Bebi and Akkayamma are the other accused. It is also pertinent to note that P.W.1/Manjunath, the petitioner herein in his deposition has admitted that he filed a suit for partition in the year 2011 in which the respondent's son is the third defendant and the respondent's husband is the 4<sup>th</sup> defendant. Though the petitioner

had denied that the respondent herein had preferred the complaint against him, to prove the same Ex.D.1 to Ex.D.4 were marked. Admittedly, the documents were in Kanada and the translated version has not been filed before the Court, except for Ex.D.1 and Ex.D.2.

8. As stated supra, there was a strained relationship between the petitioner and the respondent even in the year 2011, when the petitioner had filed a suit for partition and the Ex.D.1 and Ex.D.2/Complaints dated 25.09.2012 were preferred by the respondent, much prior to the date of issuance of the Cheques. So, it is painful to accept that the petitioner herein had lent money of Rs.2,00,000/- in the month of December 2012 and to discharge the same, the respondent herein had issued the Ex.P.1 and Ex.P.2/Cheques.

9. The Trial Court has considered all the aspects in proper perspective and came to the correct conclusion that the petitioner herein has not proved that the Ex.P.1 and Ex.P.2/Cheques were issued by the respondent to discharge the legally subsisting liability. Hence, I am of the view that there is no reason for granting leave to prefer an appeal against the acquittal.

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

Sd/-

Asst.Registrar (Records)

/true copy/

Sub Asst. Registrar

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To

The learned Judicial Magistrate (FTC), Hosur.

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