IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2015

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

Crl.O.P.No.2835 of 2015
in
Crl.A.SR.No.4622 of 2015

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

Mr.R.Deenadalayan
S/o.G.Ramdoss Naidu .. Petitioner

vs

Mr.G.Rajendran
S/o.M.Gopal .. Respondent

Prayer:-
This Criminal Original Petition is filed under Section 378(4) Cr.P.C. to grant Special leave to the petitioner to file an appeal against the judgment of acquittal dated 28.11.2014 passed in C.C.No.3435 of 2009 on the file of the learned Metropolitan Magistrate FTC No.IV, George Town, Chennai.

For Petitioner : M/s.Muthumani Doraisami

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 respondent herein had admitted the issuance of the Ex.P.1/Cheque. But the Trial Court without invoking the presumption under Section 118 and 139 of the Negotiable Instruments Act had acquitted the respondent stating that the respondent herein had rebutted the presumption by contending that the Ex.P.1/Cheque was issued as a security for the borrowing a sum of Rs.50,000/- from the petitioner on 29.12.2006 and when the amount of Rs.50,000/- was repaid to the petitioner, he demanded interest and when the respondent refused to pay the interest as demanded by the petitioner, the petitioner filled up the Ex.P.1/Cheque and filed the complaint, which is against the presumption under Section 139 of the Negotiable Instruments Act. Hence, the learned counsel for the petitioner 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 petitioner herein as a complainant filed a complaint stating that during the month of October 2006, the respondent herein had borrowed a sum of Rs.2,00,000/- and agreed to repay the same with interest at the rate of 24% per annum within two months. However, the respondent did not repay the money in time. When the petitioner herein demanded the money, the respondent issued the Ex.P.1/Cheque for a sum of Rs.3,21,327/-. When the said cheque was presented for en-cashment, the same was returned as 'insufficient funds', which is evidenced by the Ex.P.2/Return Memo. Hence, notice under Section 138 (b) of Negotiable Instruments Act, 1981 has been issued under Ex.P.3 dated 27.04.2009, which was evidenced by Ex.P.4/Acknowledgement card, dated 04.05.2009. Since the respondent neither sent any reply nor repaid the money, the petitioner herein preferred the complaint. It is an admitted fact that as per Section 139 of the Negotiable Instruments Act, once issuance of the cheque and the signature in the cheque is admitted, the petitioner is entitled to presumption under Section 118 and 139 of the Negotiable Instruments Act, which is a rebuttable presumption. The Trial Court has held that the respondent herein has rebutted the presumption by way of examining the witnesses D.W.1 to D.W.3 and marking Ex.D.1 to Ex.D.6.

6. A bare perusal of the entire documents would show that the amount of Rs.50,000/- was paid by the petitioner to the respondent by way of Ex.D.1/Cheque dated 29.12.2006, which is also evidenced by Ex.D.2/Bank statement of the Complainant. The respondent by examining the witnesses D.W.1/Manoharan, D.W.2/Sengutuvan and the respondent himself deposing as D.W.3 and marking Ex.D.1 to Ex.D6 has rebutted the presumption. So, now the onus is shifted to the petitioner to prove that the cheque has been issued for discharging the legally subsisting liability.

7. Even though the petitioner herein in his complaint has stated that the respondent had borrowed the money in the month of October 2006, he has not filed any scrap of papers to prove that he had lent

the amount to the respondent and his capacity to lend such amount. Further, the petitioner who was examined as P.W.1 had deposed in his cross-examination that he is an Income Tax assesse, however he has not mentioned the amount alleged to have lent to the respondent in his IT returns.

8. Considering all the above aspects, the Trial Court has rightly held that the respondent has rebutted the presumption under Section 139 of the Negotiable Instruments Act. When the onus is shifted to the petitioner to prove that the cheque was issued for discharging the legally subsisting liability, the petitioner did not prove the same. Hence, I am of the view that there is no reason for granting leave to prefer an appeal against the acquittal.

9. n the result, the Criminal Original Petition is dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The learned Metropolitan Magistrate
FTC No.IV, George Town, Chennai.

2.The Chief Metropolitan Magistrate,
George Town, Chennai.

1 cc to M/s.Muthumani Doraisami,Advocate, SR.No.11902

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rv(co)
pmk.17.3.2015