

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2015

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

Cr1.O.P.No.27552 of 2014

in

Cr1.A.Sr.No.29371 of 2014

Jalaja

...Petitioner/Complainant

Vs.

C.K.Vilasini

...Respondent/Accused

Prayer:- Petition filed under Section 378(4) Cr.P.C. to grant special leave to the petitioner to prefer the appeal against the judgment of acquittal dated 09.04.2014 in STR No.2494 of 2012 on the file of the learned Judicial Magistrate, Mahe.

For Petitioner : Mr.V.Senthil Murugan

O R D E R

This petition is filed for granting leave to the petitioner to file appeal against the judgment of acquittal dated 09.04.2014 in STR No.2494 of 2012 on the file of the learned Judicial Magistrate, Mahe.

2.The petitioner as a complainant preferred a private complaint against the respondent/accused stating that the accused has borrowed a sum of Rs.10,00,000/- from the complainant and to discharge the same, she gave Ex.P1 cheque dated 20.06.2012. When the complainant presented the cheque for encashment, it was returned as 'funds insufficient' as per Ex.P2 return memo. So the complainant sent Ex.P3 statutory notice to the accused under Section 138(b) of the Negotiable Instruments Act(hereinafter called as "the Act") and the acknowledgment card was marked as Ex.P4. Even though the accused sent

reply notice Ex.P5, she did not repay the amount. The memo issued by the State Bank of India, Mahe was marked as Ex.P6. Therefore, the complainant preferred a private complaint against the accused under Section 138 of the Act.

3.The trial Court has taken cognizance of an offence, after following the procedure and recording sworn statement. Since the accused pleaded not guilty, the trial Court examined P.W.1 and marked Exs.P1 to P6 on the side of the complainant and examined D.W.1 on the side of the accused. The trial Court after considering the oral and documentary evidence, acquitted the accused for the offence under Section 138 of the Act stating that financial capacity of the complainant is not proved and the complainant without knowing repayment capacity of the accused, has given the huge amount to the accused that too without obtaining any document creates doubt about the case of the complainant.

4.Challenging the judgment of acquittal passed by the trial Court, learned counsel for the petitioner/complainant submitted that the trial Court failed to consider the fact that once issuance of cheque was admitted by the accused, the complainant is entitled to invoke presumption under Sections 118 and 139 of the Act that the accused issued the cheque for discharging legally subsisting liability. It is further submitted that even though the accused raised the defence that she handed over two cheques while she was receiving Rs.1,00,000/- from the complainant and executed agreement on the same day, the same was not probalised by way of examining the witness. But the respondent filed only xerox copies of the agreement made between the complainant and accused dated 10.08.2011 and discharge receipt given by the complainant dated 17.03.2012 and she has not rebutted the presumption even though she filed two documents. But the trial Court without considering all the above aspects erroneously acquitted the accused. Therefore, he prayed for granting leave to prefer the appeal.

5.Heard the submissions made by the learned counsel for the petitioner and perused the materials available on record.

6.The case of the petitioner/complainant is that the respondent borrowed Rs.10,00,000/- from her and after six months, she issued Ex.P1 cheque. When the same was presented for encashment, it was returned as "insufficient funds" as per Ex.P2 return memo. Therefore, the complainant sent Ex.P3 statutory notice to the accused and the acknowledgment card was marked as Ex.P4. After receiving notice, the

accused sent Ex.P5 reply notice. Since the accused did not repay the amount, the complainant preferred a private complaint against the accused.

7.As per the dictum of the Apex Court, the accused once admitted the issuance of cheque, the complainant is entitled to invoke presumption under Sections 118 and 139 of the Act that the cheque was issued for discharging legally subsisting liability and the burden is shifted to the accused to prove that the cheque was not issued for discharging legally subsisting liability. Further, the guilt of the accused has to be proved by the prosecution beyond all reasonable doubt and the accused is entitled to prove the defence by preponderance of probabilities either by way of examining any witness on her side or cross-examining the complainant.

8.On perusal of the cross-examination of P.W.1/complainant, it reveals that the petitioner herein has lent a sum of Rs.10,00,000/- to the accused without obtaining any document and after six months only, the accused issued Ex.P1 cheque. P.W.1 further deposed that she is a house wife and that she has no financial capacity and she has taken the said amount from her son's account in HSBC Bank. But P.W.1 has not filed any document to show that she lent Rs.10,00,000/- that too single payment to the accused. Moreover, the complainant has not shown any source of income. In such circumstances, cross-examination of P.W.1 itself clearly falsifies her case. Further, she has not known even the date on which she lent Rs.10,00,000/- to the accused. It is to be noted that if a person lent huge sum of Rs.10,00,000/- without obtaining any scrap of papers from the borrower is unbelievable.

9.Considering the aforestated circumstances of the case, I am of the view, the trial Court after considering all the aspects in proper perspective has 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.No.29371 of 2014 is rejected.

Sd/-

Assistant Registrar(CS-III)

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Sub Assistant Registrar

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To

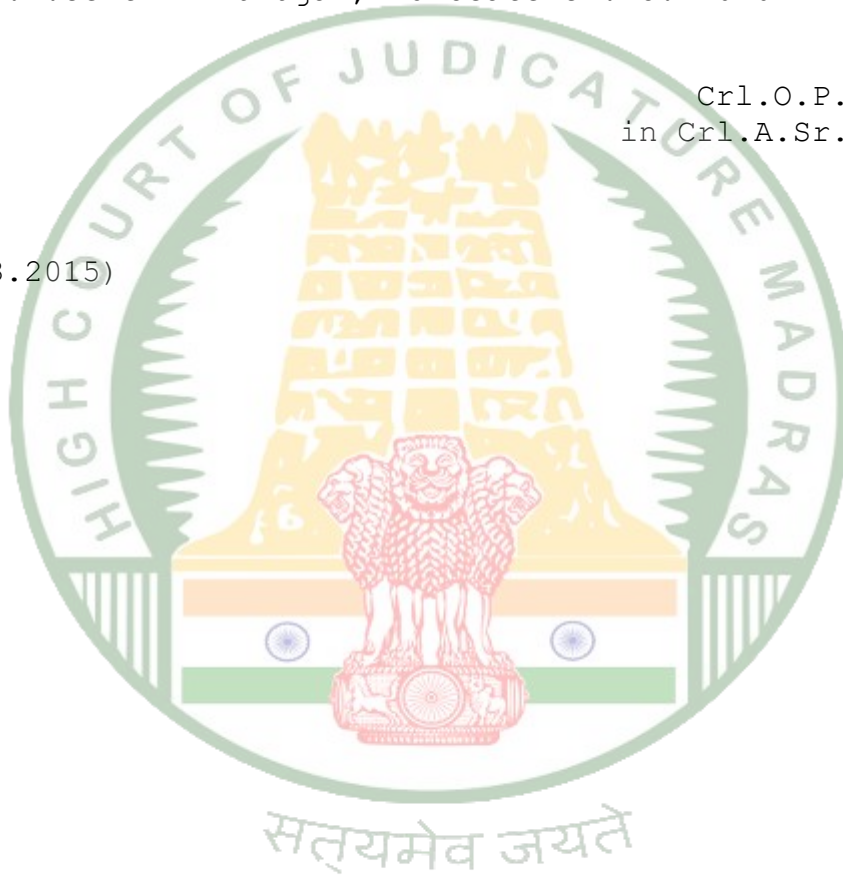
1.The Judicial Magistrate,
Mahe.

2.The Public Prosecutor
High Court, Chennai.

1 CC to Mr.V.Senthil Murugan, Advocate SR.No. 10402

Crl.O.P.No.27552 of 2014
in Crl.A.Sr.No.29371 of 2014

SAI (CO)
PSI (11.03.2015)



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