

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2015

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

Crl.O.P.No.3369 of 2015
in Crl.A.No.SR5226 of 2015

Order reserved on:02.03.2015

Order pronounced on: 04.03.2015

Govindappa

.. Petitioner

vs

Prabhakar Reddy

.. 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 08.12.2014 passed in S.T.C.No.136 of 2011 on the file of the learned Judicial Magistrate, Fast Track Court, Hosur.

For Petitioner : Mr.C.Samivel

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 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 borrowed a sum of Rs.2,00,000/- 12.01.2008 for the purpose of developing his business and to repay the same, he issued a cheque/Ex.P.1 dated 12.01.2008, which has been presented for encashment as per Ex.P.2 on 02.08.2008 and that has been returned as "Insufficient Funds" per return memo/Ex.P.3. Hence, he issued a statutory notice under Ex.P.4, which was evidenced from acknowledgment Card/Ex.P.5. Since the respondent neither repaid the amount nor given a reply, he was forced to file a complaint under Section 138 of Negotiable Instruments Act. He would further submit that once the signature is admitted he is entitled to invoke

presumption under Sections 118 and 139 of Negotiable Instruments Act. The Trial Court has not considered the same. He would submit that the rebuttable presumption has not been rebutted by the respondent/accused 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 lent Rs.2,00,000/- on 12.01.2008 and on the same day itself, he has given a cheque/Ex.P.1, which was presented for encashment under Ex.P.2 and that has been returned as "Insufficient Funds" as per Ex.P.3 and hence, the petitioner issued statutory notice, Ex.P.4 on 29.02.2008 which was evidenced from acknowledgement card/Ex.P.5. The respondent issued a notice/Ex.P.8 dated 04.11.2008 and he sent a reply/Ex.P.9 dated 27.12.2008. The petitioner given a complaint/Ex.P.6 on 11.10.2011 at Bagalur Police Station. Since the cheque has been dishonoured, he filed a complaint under Section 138 of Negotiable Instruments Act.

6. The case of the respondent is that he issued post dated cheque when they entered into a sale agreement on 16.11.2007 along with one Krishnappa to purchase the property from him, who is a Power of Attorney to one Sampangi. Since the Sampangi has executed the Power of Attorney on 22.10.2004 and that has been cancelled on 11.02.2005. After entering into the sale agreement, he came to know the cancellation of Power of Attorney in favour of the petitioner. Hence, he demanded for return of Rs.50,000/- and also the cheque. Notice has been issued.

7. Now, the Court has to decide whether the defence has probablised by the respondent herein? It is pertinent to note that the respondent herein has examined himself as D.W.1 and one Murugesan and Raghu were examined as D.W.2 and D.W.3. In the evidence, they have deposed about the payment of Rs.50,000/- and also the post dated cheque given by the respondent herein and the said Krishnappa. It is pertinent to note that even though the petitioner is disputing the execution of Sale agreement/Ex.D.1, the document was sent to Forensic Department, wherein it was held that once the signature is one and the same, the Trial Court has cogent reason stating that the finding of the Expert is not substantial piece of evidence and that has been proved by examining the witnesses, D.W.2 and D.W.3. Hence, the Trial Court has rightly held that Ex.D.1 is a true document and the recital in the document would prove that the cheque/Ex.P.1 dated 12.01.2008 has been given by the respondent only as a sale consideration. In the cross examination, they have categorically stated that the cheque has been given on the date of sale agreement/Ex.D.1. So, the

respondent herein has probablised the defence by way of examination of D.W.2 and D.W.3 and the documentary evidence also. In such circumstances, the onus has been shifted to the complainant to prove that the cheque has been issued to discharge the legally subsisting liability. But, he has not examined any witness except Ipse dixit of P.W.1. So, the Trial Court has correctly held that the petitioner herein has not proved that the cheque has been issued for discharging legally subsisting liability. Hence, I do not find any merits and there is no purpose will be served in granting leave to prefer an appeal.

8.In the result, the Criminal Original Petition is dismissed. Consequently, CrI.A.No.SR5226 of 2015 is rejected.

cse

-s/d-
Assistant Registrar(CO)
Dt:10/3/2015

True Copy

Sub-Assistant Registrar

To

1. The Judicial Magistrate,
Fast Track Court, Hosur.
2. -do- thro' The Chief Judicial Magistrate,
Hosur.

+ 1 cc to Mr.N.Sureka, Advocate SR 12220

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