

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2015

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

Crl.O.P.No.3370 of 2015
in Crl.A.No.SR5228 of 2015

Order reserved on:02.03.20 15
Order pronounced on:04.03.2015

Govindappa

.. Petitioner

vs

Krishnappa

.. 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.137 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/- on 10.12.2007 for the purpose of developing his business and to repay the same, he issued a cheque/Ex.P.1 dated 15.01.2008, which has been presented for encashment as per Ex.P.2 on 24.01.2008 and that has been returned as "Insufficient Funds" per return memo/Ex.P.3. At request of the respondent, the petitioner again presented for encashment on 05.03.2008 under Ex.P.4 and that has also been returned on 06.03.2008 as per Ex.P.5. Hence, he issued a statutory notice under Ex.P.8 and the same was returned as per Ex.P.9. 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 10.12.2007 and he has given a cheque/Ex.P.1 dated 15.01.2008, which was presented for encashment under Ex.P.2 and that has been returned on 28.01.2008 as "Insufficient Funds" as per Ex.P.3 and at the request of the respondent, he re-presented for encashment on 05.03.2008 as per Ex.P.4 and the same was also returned as per Ex.P.7., Debit advise was marked as Ex.P.5 and Ex.P.6. Since it was returned the petitioner issued statutory notice, Ex.P.8 on 17.03.2008 and that has been returned as per Ex.P.9. The respondent issued a notice/Ex.P.12 dated 04.11.2008 and he sent a reply/Ex.P.13 dated 27.12.2008. The petitioner given a complaint/Ex.P.10 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 Prabhakar Reddy 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 Prabhakar Reddy. In the cross examination, they have categorically stated that the cheque has been given on the date of sale agreement/Ex.D.1. It is pertinent to note that even though he is disputing the execution of Sale agreement/Ex.D.1, the document was sent to Forensic Department, wherein it was held that the document is true and genuine. Even though expert opinion is not substantial piece of evidence, the Trial Court has considered the evidence of D.W.3 and D.W.2 and came to the

conclusion that Sale agreement/Ex.D.1 is true and genuine document executed by the petitioner herein. Since Ex.D.1 is true and genuine document, on perusal of Ex.D.1 would show that the cheque/Ex.P.1 was given as a sale consideration. 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.

8.Here, the petitioner examined P.W.3/Venkatesappa. It is true that he was not cross examined by the respondent. In his evidence, he has stated that he went to the house of the petitioner to do rock pecking work and at that time, the petitioner paid Rs.2,00000/- to the respondent. But, his evidence is not trustworthy. So the petitioner herein has not discharged his onus to prove that the cheque has been issued for legally subsisting liability. Hence, the Trial Court has rightly considered the same and came to the correct conclusion. Therefore, I do not find any merits and there is no purpose will be served in granting leave to prefer an appeal.

9.In the result, the Criminal Original Petition is dismissed. Consequently, Crl.A.No.SR5228 of 2015 is rejected.

cse

-s/d-

Assistant Registrar(CO)

Dt:10/3/2015

True Copy

Sub-Assistant Registrar

To

1. The learned Judicial Magistrate,
Fast Track Court, Hosur.

2. The Chief Judicial Magistrate,
Hosur.

+ 1cc to M/s.N.Sureka, Advocate SR 12222

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prk11/3

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