

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2015

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

Crl.O.P.No.4057 of 2015
in Crl.A.No.SR59493 of 2014

Order reserved on: 23.02.2015

Order pronounced on: 25.02.2015

M/s.G.V.Films

Represented by its Director

Mr.P.Raghuraman,

F-O, Whipering Heights, No.132, St.Marys Road,
Chennai- 600 018.

.. Petitioner

vs

1. M/s.Golden Square Films (P) Ltd.,
Represented by its Director
Mrs.Sharada Ramanathan
"Fantasia", No.26, Vijayalakshmi Street,
Mahalingapuram, Chennai - 34.

2. Mrs.Sharada Ramanathan,
Director,
M/s.Golden Square Films (P) Ltd.,
"Fantasia", No.26, Vijayalakshmi Street,
Mahalingapuram, Chennai - 34.

.. Respondents

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 30.10.2014 passed in C.C.No.2939 of 2010 on the file of the learned Metropolitan Magistrate (FTC II), Egmore, Chennai.

For Petitioner : Mr.V.Bhiman
for M/s.Rugan and Arya

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 herein has issued a cheque/Ex.P.5 dated 07.04.2009 for a sum of Rs.25,00,000/- to the petitioner for discharging legally subsisting liability and when it was presented for encashment, it was returned as "Account closed", as per Return Memo/Ex.P.6. Statutory notice/Ex.P.8 under Section 138(b) of Negotiable Instruments Act has been issued and it was received by the respondent, which was evidenced from acknowledgment card/Ex.P.9. The respondent has given interim reply/Ex.P.10 and detailed reply/Ex.P.11, wherein he has stated that the cheque/Ex.P.5 was not issued for legally subsisting liability. Once the issuance of cheque and the signature in the cheque has been admitted, the petitioner is entitled to invoke the presumption under Sections 118 and 139 of Negotiable Instruments Act. But the presumption has not been rebutted. The Trial Judge in paragraph Nos.9 and 10 of the judgment has held that the petitioner herein is entitled only for Rs.10,00,000/- and the petitioner has not proved that the respondent was guilty under Section 138 of Negotiable Instruments Act. He would further submits that it is the duty of the Court as to decide whether the cheque has been issued for discharging legally subsisting liability and not to decide how much amount, the petitioner is entitled to. Hence, he pray to grant leave to prefer an appeal against the respondent.

4.Considering the submissions made by the learned counsel appearing for the petitioner and on perusing the paragraph Nos.9 and 10 of the judgment, I am of the view that it is a fit case for granting leave because once the issuance of cheque and signature in the cheque has been admitted, whether the defence has been proved by the respondent has to be decided only after considering the oral and documentary evidence. Hence, leave granted.

5.In the result, the Criminal Original Petition is allowed.

cse

-s/d-

Deputy Registrar(J)

Dt:2/3/2015

True Copy

Sub-Assistant Registrar

To

The learned Metropolitan Magistrate (FTC II),
Egmore, Chennai.

Copy to

The Section Officer,
Criminal Section,
High Court, Madras.

ts(co)
prk5/3

Cr1.O.P.No.4057 of 2015
in Cr1.A.No.SR59493 of 2014



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