

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2015

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

Crl.O.P.No.6239 of 2015
in Crl.A.No.SR25849 of 2014

Murugan

.. Petitioner

vs

Kumar

.. 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 order of acquittal dated 02.05.2014 passed in C.C.No.144 of 2009 on the file of the learned Judicial Magistrate No.II, Cuddalore.

For Petitioner : Mr.M.Sudharsan

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 money and to discharge the same, he issued a cheque/Ex.P.1 dated 10.03.2009 for Rs.14,40,000/- drawn on IDBI Bank, which was presented for encashment and that has been returned as per Return memo/Ex.P.2 as "insufficient funds". Statutory notice was issued under Ex.P.3 on 26.05.2009 and Ex.P.4 is the returned postal cover. Hence, he preferred a complaint. Once the signature in the cheque/Ex.P.1 has been admitted, the petitioner is entitled to invoke presumption under Sections 118 and 139 of Negotiable Instruments Act. Even though the presumption is rebuttable presumption, but the presumption was not rebutted. But the Trial Court has held that the presumption was rebutted. Hence, the onus has been shifted to the complainant to prove that the cheque/Ex.P.1 has been issued for discharging legally subsisting liability. The Trial Court has failed to consider that the respondent has not rebutted the presumption under Section 139 of Negotiable Instruments Act. 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 on 10.03.2009 the respondent has issued a cheque for Rs.14,40,000/- for discharging legally subsisting liability as per Ex.P.1 which was presented for encashment and that has been returned as per Return Memo/Ex.P.2 as "insufficient funds"and Statutory notice under Ex.P.3 has been issued and that has been returned as per returned postal cover/Ex.P.4. Then, the petitioner preferred a complaint. The petitioner was examined as P.W.1. It is true that once the issuance of the cheque and the signature in the cheque has been admitted, the petitioner/complainant is entitled to invoke presumption under Section 118 and 139 of Negotiable Instruments Act. The presumption is a rebuttable presumption and that has to be rebutted by the respondent/accused by preponderance of probabilities either by way of examining independent witness or by cross examination of prosecution witness.

6.On perusal of the judgment shows that on the side of the petitioner/complainant, P.W.1 was examined and Ex.P.1 to Ex.P.4 were marked and on the side of the respondent, no oral and documentary evidence was marked. But whereas P.W.1, himself has admitted that at the time of lending money, he obtained six promissory notes and in that, date has not been mentioned. Further, he has stated that he is having six Cheques drawn in Indian Overseas Bank in his possession which are unfilled documents. In Paragraph Nos.13, 14 and 16 of the judgment, the Trial Court has culled out the admission of P.W.1 and came to the correct conclusion that the respondent herein has probablised his defence by cross examining P.W.1. So, the onus is shifted to the petitioner/complainant to prove that the cheque/Ex.P.1 has been issued for discharging legally subsisting liability. But even though, P.W.1, in his cross examination has admitted that he is in possession of the document, but he has not adduced any reason for why he has not filed any document to prove that the cheque/Ex.P.1 has been issued for discharging legally subsisting liability. So, I am of the view that the petitioner herein has not proved that the cheque/Ex.P.1 has been issued for discharging legally subsisting liability.

7.In such circumstances, the Trial Court has considered all the aspects in proper perspective and came to the correct conclusion. Hence, I am of the view that there is no reason for granting leave to prefer an appeal against the acquittal.

8.In the result, the Criminal Original Petition is dismissed as devoid of merits. Consequently, Crl.A.No.SR25849 of 2014 is rejected.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

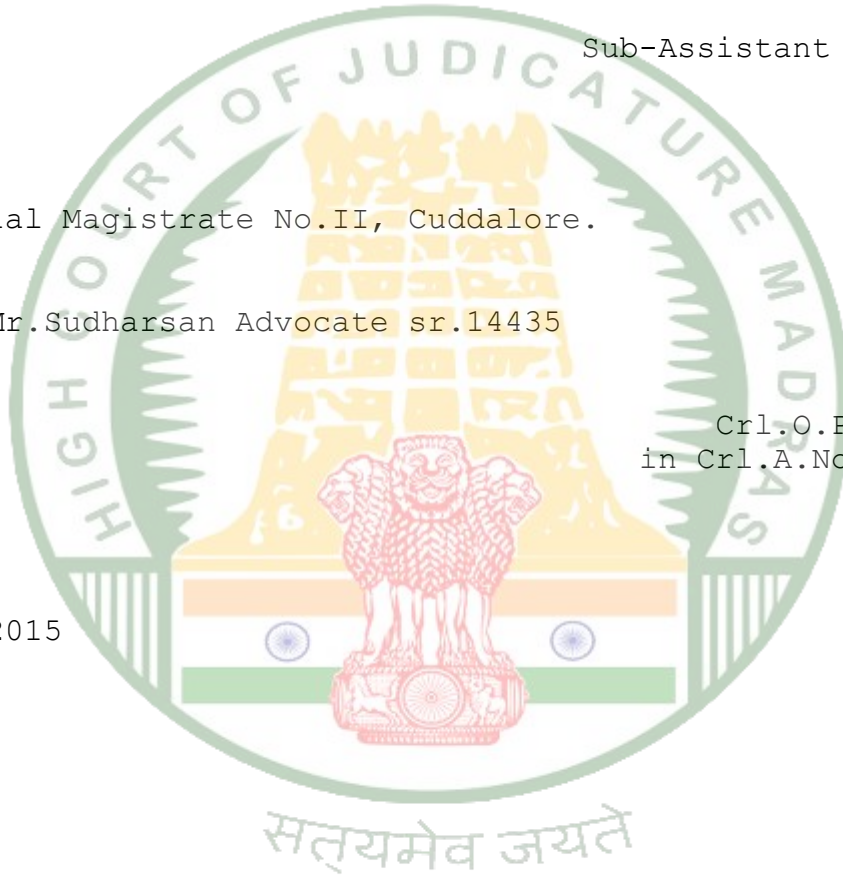
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To

The Judicial Magistrate No.II, Cuddalore.

+1 cc to Mr.Sudharsan Advocate sr.14435

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