

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2015

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

Cr1.O.P.No.6613 of 2015
in Cr1.A.Sr.No.58326 of 2014

D.Kuppammal

... Petitioner/Appellant

Vs.

V.G.Gurav

... Respondent/Respondent

Prayer:- Petition filed under Section 378(4) Cr.P.C. to grant leave to the petitioner to file the appeal against the judgment of acquittal dated 21.11.2014 in C.C.No.35 of 2010 on the file of the Judicial Magistrate's Court, Arakkonam.

For Petitioner : Mr.S.Sadasharam

O R D E R

This petition is filed for granting leave to the petitioner to file appeal against the judgment of acquittal dated 21.11.2014 in C.C.No.35 of 2010 on the file of the Judicial Magistrate's Court, Arakkonam.

2.The petitioner as a complainant preferred a private complaint against the respondent/accused stating that on 27.12.2009, the respondent has borrowed a sum of Rs.15,00,000/- from the complainant and issued post-dated cheque 27.01.2010 Ex.P1. When the appellant presented the cheque for encashment, it was returned for the reason stop payment by the accused and insufficient funds vide Ex.P3 return memo and the challan was marked as Ex.P2. So the complainant sent a statutory notice Ex.P4 to the accused and the registered postal receipt was marked as Ex.P5 and the acknowledgment card was marked as Ex.P6. Since the respondent neither repaid the amount nor sent any reply, the appellant preferred a private complaint against the accused under Section 138 of the Negotiable Instruments Act (hereinafter called as "the Act").

3.The trial Court after considering the oral and documentary evidence acquitted the respondent/accused, against which, the petitioner/complainant has come forward with this petition to grant leave to prefer appeal against the judgment of acquittal.

4.Learned counsel for the petitioner submitted that the trial Court has rightly rejected the plea of the respondent that he is not in the place on the date of borrowing amount and no notice u/s.138(b) of the Act was served. But whereas the trial Court has held that the appellant herein has not proved that the cheque has been issued by the respondent for discharging legally subsisting liability. Because the respondent raised the defence that the cheque was already missing, for which, a complaint has been given, hence there is no possibility for issuing Ex.P1 cheque on 27.12.2009 and on that basis the trial court has acquitted the respondent. It is further submitted that the trial Court has failed to consider the evidence on the side of the petitioner and hence he prayed for granting leave to file the appeal.

5.Considered the submissions made by the learned counsel for the petitioner and perused the typed set of papers.

6.It is the case of the petitioner/complainant that on 27.12.2009, the respondent had borrowed Rs.15,00,000/- and to discharge the same, he issued Ex.P1 cheque dated 27.1.2010. When the petitioner presented the cheque for encashment, it was returned as stop payment by the accused and insufficient funds in the account vide Ex.P3 return memo. Therefore, the appellant issued statutory notice Ex.P4 to the respondent. Even though the trial court acquitted the accused, it has held that the respondent has not proved the alibi and also rejected the defence raised by the respondent that no notice was served under Section 138(b) of the Act. But the trial Court has accepted the defence raised by the respondent that the cheque was already lost, for which, he has lodged a complaint and the same has been properly proved by way of examining the witnesses and marking Ex.P7. It is clear that the respondent herein has probalilised his defence. So the onus is shifted to the petitioner/complainant that the cheque was issued for discharging legally subsisting liability. But the petitioner has not proved the same. Hence the trial court in para-14 of its judgment considering all the aspects in proper perspective manner, has acquitted the accused.

7.It is well settled dictum of the Apex Court that once the accused admits his signature in the cheque, the complainant is entitled to invoke presumption under Sections 118 and 139 of the Act that cheque was issued for discharging legally subsisting liability, which is rebuttable presumption. So the respondent has to prove his defence by preponderance of probabilities and not by beyond

reasonable doubt.

8.In the case on hand, the respondent has probabilsed his defence by examining the witnesses D.W.1 to D.W.4 and marking Exs.D1 to D5 and Ex.P7 through P.W.2/Canara Bank Manager. On perusing the same, there is no possibility for giving Ex.P1 cheque dated 27.1.2010, which was lost on 28.01.2009. Once the presumption has been rebutted by the accused, the onus is shifted to the complainant to prove that the cheque is issued for discharging legally subsisting liability. But the complainant has not filed any scrap of papers to prove the same. Moreover, it is painful to accept that the complainant has given Rs.15,00,000/- to the respondent without obtaining any document except the disputed cheque.

9.Under the above said circumstances, I am of the view, the trial Court has considered all the aspects in proper perspective and came to the correct conclusion that the complainant has not proved that the cheque was issued for discharging legally subsisting liability and 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, CrI.A.Sr.No.58326 of 2014 is rejected.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate, Arakkonam.

2.The Public Prosecutor
High Court, Chennai.

1 cc to Mr.S.Sadasharam ,Advocate, SR.No.15080

CrI.O.P.No.6613 of 2015
in CrI.A.Sr.No.58326 of 2014

sr(co)
pmk.8.4.2015