



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Tuesday, the Sixth day of January Two Thousand Fifteen

PRESENT

WEB COPY

The Hon`ble Mr.Justice M.SATHYANARAYANAN

CRL OP(MD) No.21854 of 2014
in
Crl.A(MD).SR.No.34321 of 2014
and
CRL OP(MD) No.21104 of 2014
in
Crl.A(MD).SR.No.34320 of 2014

RAMAR ... PETITIONER/APPELLANT/COMPLAINANT in both cases

Vs

1 M/S. MAHARAJA BLUE METALS
THROUGH ITS PROPRIETOR, K. LAKSHMI, W/O. P.
KUMAR, 275, 8TH CROSS ST., KOTEESWARAN NAGAR,
PETTAI, TIRUNELVELI-6, (PETTAI POLICE LIMIT)

2 K. LAKSHMI ... RESPONDENTS/RESPONDENTS/ACCUSED in both cases

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased (I)to grant special leave to preferred appeal against the judgement in C.C.no.51/2014 dated 20/08/2014 on the file of the Fast Track Court (Magisterial level) Thoothukudi.

(II)to grant special leave to preferred appeal against the judgement in C.C.no.52/2014 dated 20/08/2014 on the file of the Fast Track Court (Magisterial level) Thoothukudi.

ORDER : These petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.M.BENAZIR BEGUM , Advocate for the petitioner in both cases and the court made the following order:-

The petitioner is the complainant in C.C.Nos.51 and 52 of 2014 on the file of Fast Track Court, (Magisterial Level) at Tuticorin. The private complaints were filed under Sections 138 and 142 of the Negotiable Instruments Act to prosecute the accused. The said private complaints, after fullfledged trial, were dismissed on 20.08.2014, holding among other things that he has failed to prove that there is a legal enforceable debt exists between him and the accused. The petitioner aggrieved by the said order of acquittal dated 20.08.2014, has filed these appeals with petitions seeking



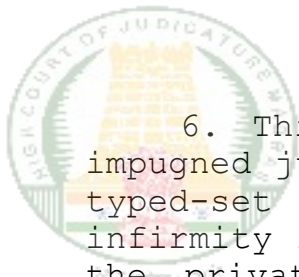
leave to prefer the appeals.

2. The learned counsel for the petitioner has drawn the attention of this Court to the oral testimony of D.W.1 and would submit that the husband of the 2nd accused, namely, K.Lakshmi is the Contractor and with whom, the petitioner/ appellant/complainant had an arrangement to supply the materials as well as putting up construction and on account of the same, he is liable to pay the amounts to the petitioner and in this regard, the 2nd accused, as Proprietor of Accused No.1 has issued two cheques dated 12.06.2013 and 13.06.2013, drawn in favour of UCO Bank for a sum of Rs.4,45,000/- respectively and the said cheques, on presentation, had dishonoured and it is followed by a statutory notice and there is no response from the accused at all and overlooking the material aspects, the trial Court has erroneously come to the conclusion that there was no legal enforceable debt exists between the petitioner/complainant and the accused.

3. The learned counsel for the petitioner also made an attempt to file some additional documents, without filing a petition to receive the additional documents to substantiate her contentions. The learned counsel for the petitioner has also invited the attention of this Court to the impugned judgment and would submit that though the trial Court has come to the conclusion that the accused after receipt of statutory notice did not respond and did not also seriously dispute the signature in the cheques and hold that legal enforceable debt exists between the petitioner and the accused by citing the said reason and without due application of mind to the materials available on record in the form of oral and documentary evidence dismissed the complaints and therefore, prayed for leave.

4. This Court has carefully considered the submissions made by the learned counsel appearing for the petitioner/private complainant and also perused the materials available on record in the form of typed set of documents.

5. A perusal of the impugned order as well as the testimony of D.W.1 would disclose that what is not pleaded in the complaints has been adduced in the form of oral and documentary evidence. In the complaints, it is nowhere stated that the husband of the 2nd accused is the actual Contractor and the petitioner/complainant is not only supplying materials but also aiding him in putting up construction in the form of ladies hostel. No doubt, the accused did not respond to the statutory notice and has not seriously disputed the signing of the cheques. However, in order to cast the criminal liability under Section 138 of the Negotiable Instruments Act, the debt exists between the accused and the complainant should be a legally enforceable one and the said aspect has been gone into by the trial Court elaborately and had reached the conclusion that there is no legally enforceable debt between the complainant and the accused and the complainant has failed to prove the case beyond all probabilities.



6. This Court, on an independent application of mind to the impugned judgment and the materials placed before it in the form of typed-set of papers, is of the view that there is no error or infirmity in the reasons assigned by the Trial Court for dismissing the private complaints. Therefore, the petitions for leave are dismissed and consequently, Crl.A.(MD)SR.Nos.34320 and 34321 of 2014 are rejected. However, it is always open to the petitioner/appellant/complainant to work out his further remedies in accordance with law.

sd/-

06/01/2015

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1 THE JUDGE, FAST TRACK COURT (MAGISTRATE LEVEL),
THOOTHUKUDI

2 THE CHIEF JUDICIAL MAGISTRATE, THOOTHUKUDI

ORDER

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Date :06/01/2015

AA/09.01.2015/3p- 3c/