



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

Tuesday, the Twenty Fourth day of February Two Thousand Fifteen

PRESENT

WEB COPY

The Hon`ble Mr.Justice M.SATHYANARAYANAN

CRL OP(MD) No.2991 of 2015
IN
CRL.A(MD).No.SR.38648 of 2014

R.VELLAISAMY ... PETITIONER/APPELLANT

Vs

P.KUMARASAMY DOSS ... RESPONDENT/COMPLAINANT

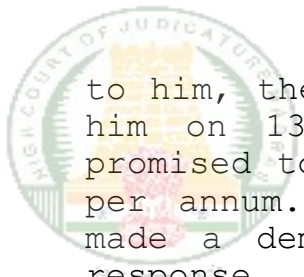
Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to to grant special leave for the petitioner to prefer appeal against the judgment of acquittal dated 03.01.2014 passed by the learned FTC (Magistrate Level), Thoothukudi in C.C.no. 118 of 2012.

PRAYER IN CRL.A.SR.No.38648 of 2014:

Criminal Appeal as against the Judgment of Acquittal passed by the learned Fast Track Court(Magisterial Level), Thoothukudi in C.C.No.118 of 2012 acquitting the respondent/accused of offence U/s. 138 of Negotiable Instrument Act on 03.01.2014.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of M/S. ANTONY S. PRABAHAR Advocate for the petitioner and of MR.S.MEENAKSHI SUNDARAM, on behalf of the Respondent the court made the following order:-

The petitioner is the private complainant in C.C.No.118 of 2012, on the file of the Court of Judicial Magistrate, Fast Track Court (Magisterial Level), Thoothukudi. The said complaint has been filed under Section 138 r/w 142 of the Negotiable Instrument Act, seeking to prosecute the respondent herein for the alleged commission of the said offence. The said complaint, after contest, came to be dismissed on 03.01.2014 and the respondent/accused was acquitted under Section 255(1) of the Code of Criminal Procedure. Challenging the same, the petitioner has filed this Criminal Original Petition praying for leave to file an appeal against the acquittal.



to him, the respondent/accused has borrowed a sum of Rs.6Lakhs from him on 13.01.2010 to meet out his urgent family expenses and promised to repay the said amount with interest at the rate of 18% per annum. On expiry of four months, the petitioner/complainant made a demand for return of the amount advanced by him and in response, the respondent/accused has issued a cheque dated 03.05.2010 drawn on Bank of India, Tuticorin Branch. The said cheque, on presentation, got dishonoured with an endorsement "No such account". The petitioner/complainant sent a statutory notice on 28.05.2010 and it was received on 01.06.2010 and the respondent/accused neither sent a reply nor repaid the amount and therefore, the petitioner/complainant came forward to file a private complaint.

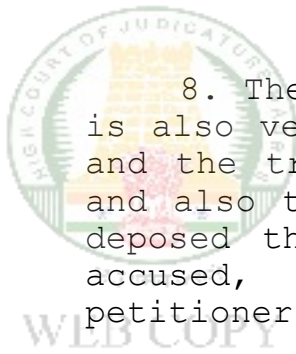
3. During the course of trial, the petitioner/complainant examined himself as P.W.1 and examined the Bank Officials as P.W.2 and P.W.3 respectively and marked the documents as Exs.P.1 to P.9. The accused was questioned under Section 313(1)(b) of the Code of Criminal Procedure, 1973, with regard to the incriminating circumstances made out against him in the evidence tendered by the prosecution and he denied it as false. On behalf of the respondent/accused, no oral evidence was let in and no documents was marked.

4. The trial Court, on consideration of oral and documentary evidences, has acquitted the respondent/accused and hence, this petition has been filed seeking for special leave.

5. Mr.Antony S.Prabakar, learned Counsel appearing for the petitioner/complainant would contend that no doubt, the petitioner/accused has not produced the relevant records maintained including the income tax evidence, but the same would not take away the initial burden cast upon the respondent/accused to discharge the presumption and having admitted the signature found in the cheque by the respondent/accused, the trial Court without properly appreciating the factual and legal positions has erroneously dismissed the complaint and acquitted the respondent/accused under Section 255(1) of the Code of Criminal Procedure.

6. This Court has carefully considered the submissions of the learned Counsel for the petitioner and the learned Counsel appearing for the respondent and also perused the impugned judgment.

7. A perusal of the impugned judgment would disclose that the trial Court has recorded the fact that the petitioner is professionally a money lender running a Finance Company under the name and style of Kuruthammal Finance Company and in the income tax return filed by the defence, the transaction of a sum of Rs.6Lakhs to the respondent/accused has not been reflected and the relevant records maintained by the said Finance Company in the course of its business have not been produced.



8. The trial Court further recorded that the cheque in question is also very old cheque, which was printed before the year of 2000 and the trial Court, taking note of the advancement in technology and also taking into consideration the testimony of P.W.2, who had deposed that he could not say that Ex.P.1 cheque belongs to the accused, has found that the case projected by the petitioner/complainant is untenable.

9. Taking note of the fact that as per Ex.D.1, the respondent/accused proved that there was some transaction in the year 1994 between the complainant and the accused, for which only the cheque in question came to be issued in the earlier period of 1990s and in the light of the factual and legal aspects, the trial Court found that the complaint filed by the petitioner to prosecute the respondent/accused is untenable and dismissed the same.

10. This Court also has a careful scrutiny through the materials placed before this Court and found that the petitioner, being a professional money lender, though in possession of the relevant documents, has failed to produce the same before the trial Court and also utilize the cheque which has been issued on earlier point of time for the purpose of filing the complaint and the trial Court, on appreciation of oral and documentary evidences, has rightly reached the conclusion to dismiss the complaint.

11. 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 complaint. Therefore, the petition for leave is dismissed and consequently, Crl.A.(MD)SR.No.38648 of 2014 is rejected. However, the petitioner/private complainant is at liberty to work out his further remedy in accordance with law, if so advised.

sd/-
24/02/2015

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

TO

- 1 THE JUDICIAL MAGISTRATE
THE FAST TRACK COURT (MAGISTRATE LEVEL), THOOTHUKUDI
- 2 THE CHIEF JUDICIAL MAGISTRATE, THOOTHUKUDI

ORDER IN
CRL OP(MD) No.2991 of 2015
IN CRL.A(MD)SR.No.38648 of 2014
Date :24/02/2015