



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

Tuesday, the Twenty Fourth day of February Two Thousand Fifteen

PRESENT

The Hon`ble Mr.Justice M.SATHYANARAYANAN

CRL OP(MD) No.3046 of 2015

A.RAZAK

... PETITIONER / APPELLANT

Vs

C.SUDHAKAR

... RESPONDENT / RESPONDENT

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to grant leave to the petitionenr to file criminal appeal aganist the ordetr of acquittal passed by the learned Judicial Magistrate No.1 FTC at Magistrate Level madurai in STC. No. 597 of 2013 dated 11.10.2014.

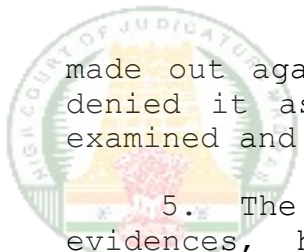
ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.ANANTH C.RAJESH Advocate, for M/S. C.S.ASSOCIATES, Advocate for the petitioner and of the Court made the following order:-

The petitioner is the private complainant in S.T.C.No.597 of 2013, on the file of the Court of the Judicial Magistrate No.I, Fast Track Court at Magisterial level, Madurai. 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 full fledged trial, came to be dismissed on 11.10.2014 and the respondent/accused was acquitted under Section 255(1) Cr.P.C. Challenging the same, the petitioner has filed this Criminal Original Petition praying for leave to file an appeal against the acquittal.

2. The learned Counsel for the petitioner would submit that admittedly the respondent/accused did not deny his signature and the trial Court, without properly appreciating the oral and documentary evidences, has erroneously reached the conclusion that the cheque, given as security, is used for the purpose of filing this complaint and also not taken note of the fact that in response to the statutory notice, no reply was sent by the respondent/accused and he has also miserably failed to discharge the burden cast upon him and hence, prayed for special leave to prosecute the appeal against acquittal.

3. This Court has carefully considered the submissions made by the learned counsel appearing for the petitioner/private complainant and also perused the impugned judgment.

4. The petitioner/complainant has examined himself as P.W.1 and examined the Official witness as P.W.2 and marked the documents as Exs.P.1 to P.5. 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 accused, one D.W.1-Selvan was examined and Ex.D.1 was marked.

5. The trial Court, on consideration of oral and documentary evidences, has found that the respondent/accused has approached the petitioner to meet out his family expenses and accordingly the petitioner/complainant has advanced a sum of Rs.20Lakhs on 02.12.2012. On 13.01.2013 the respondent/accused has issued the impugned cheque, dated 27.01.2013 for a sum of Rs.20Lakhs, which was marked as Ex.P.1, which on presentation got dishonoured and thereafter it was followed by a statutory notice, for which, there was no response and hence, the private complaint came to be filed, seeking prosecution of the respondent/accused for the commission of the offence under Section 138 r/w 142 of the Negotiable Instruments Act.

6. The trial Court has found that the petitioner/complainant is engaged in real estate business and an Income Tax Assessee and he has not disclosed the source as to how he has advanced such huge sum of Rs.20Lakhs to the respondent/accused. The trial Court further noted the fact that at the time of advancement of loan of Rs.20Lakhs, the petitioner/complainant has obtained a promissory note and the said fact has not been disclosed and however, in the course of his testimony as P.W.1, the petitioner/complainant deposed that after he got the cheque for a sum of Rs.20Lakhs, he returned the promissory note and the witness has also signed in the promissory note, however, the witness to the promissory note was not examined. From the testimony of D.W.1 and from the document Ex.D.1, the trial Court found that the earlier Serial Numbers as well as the Serial Numbers posted to the impugned cheque came to be presented in the year 2007, whereas Ex.P.1 cheque came to be presented only in the year 2013. The trial Court has also taking into consideration the defence projected by the respondent/accused that he has given the impugned cheque as a security to one Sonai Muthu during the year 2007-2008 and it has been used for the purpose of filing the private complaint, found that the defence projected by the accused is probable.

7. 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.36899 of 2014 is rejected.

sd/-
24/02/2015

/ TRUE COPY /

Sub-Assistant Registrar (C.S.)

TO

1. THE JUDICIAL MAGISTRATE NO.I,

FAST TRACK COURT AT MAGISTERIAL LEVEL, MADURAI.

2. TO THROUGH THE CHIEF JUDICIAL MAGISTRATE, MADURAI

+1cc to M/S. M/S.ANANTH C.RAJESH Advocate, Advocate in SR.No 8611
TS/27.02.2015/2P-4C