



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

( Criminal Jurisdiction )

Monday, the Twenty Third day of February Two Thousand Fifteen

PRESENT

The Hon`ble Mr. Justice M. SATHYANARAYANAN

CRL OP(MD) No.4560 of 2013

in

CrI.A(MD)SR.8109/2013

T. ESTHER,

..PETITIONER

Vs.

V. MAHESWARI

..RESPONDENT

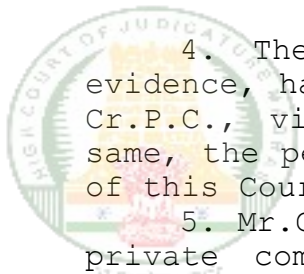
Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to grant leave to file an appeal challenging the order passed by the Judicial Magistrate Court(Fast Track), Srivilliputhur in S.T.C.No.81/2012 dated 14.02.13 and allow this criminal O.P.

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.G.MARIMUTHU, Advocate for the petitioner and of M/S.A.L.KANNAN, Advocate for the respondent, the court made the following order:-

This Criminal Original Petition has been filed praying to grant leave to file an appeal challenging the order of acquittal passed by the Court of Judicial Magistrate (Fast Track), Srivilliputhur in S.T.C.No.81 of 2012, dated 14.02.2013.

2. The petitioner is the complainant in S.T.C.No.81 of 2012 on the file Court of Judicial Magistrate, (Fast Track) (Magisterial level), Srivilliputhur. The said complaint was filed under Section 138 r/w. 141 of Negotiable Instalments Act, seeking to prosecute the respondent herein. It is the case of the petitioner / complainant that the respondent herein, to meet out her urgent family expenses, has borrowed a sum of Rs.1,00,000/- on 26.08.2012 with a promise to return the same within a period of one month and also issued a cheque bearing No.002908, dated 26.09.2012 drawn on State Bank of India, Srivilliputhur Branch. When the petitioner / complainant asked for return of the said sum, the respondent herein asked to present the cheque and accordingly, he presented the cheque on 01.10.2012, which was returned with an endorsement, "insufficient funds". The petitioner in this regard, issued a statutory notice on 16.10.2012. In response to the same, the respondent has sent a reply on 05.11.2012 contending false and frivolous allegation. Since inspite of receipt of statutory notice, the respondent did not come to pay the amount, the petitioner has filed the said private complaint. The complaint was taken cognizance and summons have issued to the respondent / accused and on her appearance, she pleaded not guilty to the charge.

3. The complainant examined himself as P.W.1 and marked Exs.P1 to P4. The respondent / accused was questioned under Section 313(1)(b) of Cr.P.C., with regard to incriminating substance made out against her in the evidence rendered by the prosecution and she denied it as false. On behalf of the respondent / accused neither oral evidence was let in nor documents were marked.



4. The trial Court on a consideration of oral and documentary evidence, has acquitted the respondent / accused under Section 255(i) of Cr.P.C., vide impugned judgment, dated 14.02.2013 and challenging the same, the petitioner has filed this Special Leave Petition, seeking leave of this Court to file an appeal against the acquittal.

5. Mr.G.Marimuthu, the learned counsel appearing for the petitioner / private complainant has invited the attention of this Court to the impugned Judgment and would submit that admittedly, the respondent / accused did not dispute her signature in the cheque and therefore failed to discharge the presumption caused upon and the said legal position has been completely overlooked by the trial Court and erroneously dismissed the complaint and hence, prays for allowing the petition.

6. Per contra, the learned counsel appearing for the respondent / complainant has invited the attention of this Court to para 10 of the impugned judgment wherein, the evidence of P.W.1 / private complainant was extracted and would submit that she is only a name lender to his brother-in-law viz., Dharmar, in whose favour the signed blank cheque was issued and the said person has utilized the services of sister-in-law and filed the present complaint and said aspect has been rightly taken into consideration by the trial Court and dismissed the private complaint and hence prays for dismissal of the Special Leave Petition.

7. This Court, after considering the rival submissions upon perusal of the impugned judgment, is of the view that the petition for Special Leave is liable to be rejected on the following reasons:-

i. In paragraph 10 of the impugned judgment, the trial Court has extracted the oral evidence of P.W.1 and who would state that she was brought to the Court only by her brother-in-law viz., Dharmar and only in the event of filing the Bank Passbook she may be in a position to know the transaction that took place in her account and further stated that even in the statutory notice as well as in the complaint she did not state as to how the respondent / accused known to him and also admitted that the respondent / accused is known to her brother-in-law. She would further depose that he was not aware of the door number of the premises, in which the respondent / accused is living and at the time of borrowing, she also executed a pro-note, the details of which, have not been stated in the complaint. P.W.1 also made a crucial admission that only as per the instruction of her brother-in-law viz., Dharmar, she has given evidence. The trial Court has taken into consideration the testimonies of P.W.1 and rightly came to the conclusion that the revision petitioner / private complainant has miserably failed to establish that the manner in which she become acquainted with the respondent / accused and tenable evidence as to advancing a sum of Rs.1,00,000/- by way of loan and also recorded the findings that her name has been utilized by the person viz., Dharmar to file the present complaint. In the considered opinion of this Court, the trial Court has rightly taken into consideration the oral testimonies of P.W.1 in proper perspective and dismissed the private complaint under Section 255(1) of Cr.P.C., This Court, on a careful scrutiny of materials placed before it and upon hearing the rival submissions is of the opinion that there is no error apparent or infirmity in the reasons assigned by the trial Court for dismissing the private complaint.

8. In the result, the petition for Special Leave is dismissed and consequently, the Criminal Appeal in CrI.A(MD)No.SR.8109 of 2013 is rejected at the SR stage itself.

sd/-  
23/02/2015



TO

1 THE JUDICIAL MAGISTRATE, (FAST TRACK, MAGISTRATE LEVEL),  
SRIVILLIPUTHUR.

2 -DO-THRO'THE CHIEF JUDICIAL MAGISTRATE,  
VIRUTHUNAGAR AT SRIVILLIPUTHUR.

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ORDER IN

CRL OP(MD) No.4560 of 2013 in

Cr1.A(MD)SR.8109/2013

Date :23/02/2015

PBK 02/03/2015 ::3P-3C: