Crl.O.P.No.12960 of 2016
in
Crl.A.SR.No.5280 of 2016

M.VENUGOPAL,J.,

Heard Mr.R.Nagasundaram, Learned counsel for the Petitioner/Appellant/Complainant and Mr.K.Chozhan, Learned counsel for the Respondent/Accused.

2.The Petitioner/Appellant/Complainant has preferred the instant Crl.O.P.No.12960 of 2016 before this Court 'Seeking Leave' to file an 'Appeal' in Crl.A.SR.No.5280 of 2016 as against the judgment dated 20.08.2015 made in C.C.No.1004 of 2011 passed by the Learned Metropolitan Magistrate, Fast Track Court-IV, George Town, Chennai in acquitting the Respondent/Accused.

3.According to the Petitioner/Appellant/Complainant, pursuant to certain debts due and payable by the Respondent/Accused in the course of his business as well as personal money transactions, the Respondent/Accused had drawn and issued cheques in his favour. It appears that believing the words of the Respondent/Accused to be true, the Petitioner/Appellant/Complainant presented the cheques for collection through his bankers. However, to the shock and dismay of the Petitioner/Appellant/Complainant, the cheques were dishonoured mentioning various reasons by the Bankers of the Respondent.

4.The principal contention advanced on behalf of the Petitioner/Appellant/Complainant is that on intimation from the Petitioner/Appellant/Complainant's Bankers, a statutory notice Ex.P5 dated 03.01.2011 was issued to the Respondent/Accused demanding payment of the value covered under the cheques. Inspite of due notice, the Respondent/Accused had not chosen to come forward to pay the claimed amount. As such, the Petitioner/Appellant/Complainant had initiated a proceeding before the Learned Magistrate in respect of an offence under Section 138 of the Negotiable Instruments Act, 1881.

5.The Learned counsel for the Petitioner/Appellant/Complainant urges before this Court that the trial Court while finding the Respondent/Accused not guilty in respect of an offence under Section 138 of the Negotiable Instruments Act, 1881, had ultimately acquitted him under Section

255(1) of the Criminal Procedure Code and the very judgment of acquittal is an illegal one in the eye of Law.

6.Advancing his argument, the Learned counsel for the Petitioner/Appellant/Complainant takes a stand that there was no challenge made by the Respondent/Accused in respect of Ex.P1/Invoices and Ex.P2/Cheques and in reality, the Respondent/Accused had not chosen to lead any evidence and examined any witness on his side.

7.At this stage, the Learned counsel for the Petitioner/Appellant/Complainant brings it to the notice of this Court that even in the cross examination of P.W.1, the Respondent/Accused had chosen to dispute only the commercial transactions in respect of supply and delivery of goods between the complainant and the accused and in short, the judgment of acquittal passed by the trial Court is a perverse and illegal one, which had resulted in serious miscarriage of justice.

8.Expatiating his submission, the Learned counsel for the Petitioner/Appellant/Complainant takes a plea that the presumption under Section 139 r/w. Section 118 of the Negotiable Instruments Act was not dislodged before the trial Court and no contrary version was established by the Respondent/Accused and indeed, the clear cut position is that Ex.P2/Cheques (series) was issued by the Respondent/Accused drawn from the bank account maintained by him.

9.At the outset, this Court pertinently points out that in terms of Section 378 of Cr.P.C., the High Court has requisite powers to review in entirety, the whole gamut of evidence giving appropriate weight to the conclusions arrived at by the trial Court. In fact, the whole issue can be reconsidered by this Court, also the evidence can be reappraised and this Court can come to its own independent conclusions based on available materials on record. It is true that this Court is to keep in mind that even at the time of 'Seeking Special Leave', the view of the trial Court in acquitting the Accused can be kept in mind and only if the judgment of acquittal passed by the trial Court is perverse, capricious and unsustainable one in the eye of Law, this Court can interfere to secure the ends of justice and in furtherance of substantial cause of justice.

10.In this connection, this Court very relevantly points out that 'Grant of Special Leave' is not an empty ritualistic formality. Even it is not a matter of course or as a matter of fact, a routine one. In reality, it is for the Petitioner/Appellant/Complainant to make out a case for 'Grant of Special Leave' by satisfying subjective conscience of this Court, of course, based on the available materials on record in the case.

11.It cannot be forgotten that a 'Wholesale', 'Omnibus' notice cannot be issued under Section 138 (b) of the Negotiable Instruments Act in the considered opinion of this Court. In the present case, a mere running of the eye over the contents of Ex.P5, Lawyer's notice dated 03.01.2011 addressed to the Respondent/Accused indicates that the Respondent/Accused was called upon on the side of the Petitioner/Appellant/Complainant to effect payment of Rs.5,11,200/- towards the value of dishonoured cheques within 15 days from the date of receipt of the notice etc. Furthermore, in Ex.P5 notice dated 03.01.2011 at para 1 it is inter-alia observed that "... *In mean time you had also requested my client to supply hardware materials for credit in your account to the tune of Rs.2,49,700/- for rejuvenating your business. Having good* *faith in you my client believed you and supplied hardware materials to the tune of Rs.2,49,700/- vide invoice No(s). 6220, 6221, 6222 and 6223 dated 03.12.2010. You have also issued Cheques bearing no(s) 034385, 034386, 034387 and 034388 dated 18.12.2010 for a sum of Rs.50,000/-, 50,000/-, 50,000/-, Rs.49,700/- respectively totaling to a sum of Rs.1,99,700/- drawn on Tamil Nadu Mercantile Bank Limited, Poonamallee Branch, Chennai – 600 056, my client was magnanimous to accept the said Cheques leaving behind Rs.50,000/- credit in your account. But you have only manage to obtain more and more time from my client and cheated him from not presenting the above said Cheques by for clearance by taking advantage of his goodness. In spite of his several request and persistent effort you instructed my client to finally deposit all the above mentioned Cheques on 18.12.2010".*

12.Besides the above, in Ex.P5 at para 2, it is also among other things stated as under:

> *"2.My client states that as per the standing instructions given by you my client had presented the above referred cheque to his banker viz., South Indian Bank, Mount Road Branch, Chennai – 600 002 on 18.12.2010, but*

as against your promise / instruction the said cheques were returned by your banker for the reason "Funds Insufficient" vide all Return Memos dated 21.12.2010. On coming to know about the Return of the Cheques from my client's banker by the debit advice dated 22.12.2010. To my client's shock and surprise after examining the debit advice for the Cheque No.698716 dated 18.06.2010. My client came to know that this particular Cheque returned as Fund Insufficient/ Stale Instrument. My client had visited you in person and seeked explanation for the dishonour of the said cheques and requested you to issue a fresh Cheque for Rs.1,50,000/- instead of the Cheque no.698716 dated 18.06.2010. You had pleaded guilty and further promised to arrange funds within short period. Having believed your promise my client had wanted for your payments. But you have started to avoid my client's phone calls and found one or other reason to delay the legitimate payments to be made to my client. My client had under gone severe mental agony and hardship by your betrayal of friendship and nonpayment of his money which is due from you."

13.Apart from that, a cursory glance of the complaint in C.C.No.1004 of 2011 on the file of trial Court at para 9 latently and patently indicates that the complainant had restricted his complaint to the tune of Rs.3,61,600/- pertaining to the dishonoured cheques bearing Nos.034385, 034386, 034387, 034388 and 698714.

14.In this connection, this Court points out that the term 'any other Law' occurring in Section 4(2) of the Criminal Procedure Code would encompass within its sweep of the N.I. Act 1881. Furthermore, the ingredients of Section 219 of Cr.P.C., are applicable to investigations, inquires and trials under the Negotiable Instruments Act as per the decision Kershi Pirozsha Bhagvagar Vs. State of Gujarat reported in 2007 Crl.L.J.3958 (3962, 3963) [Guj-DB].

15.The point that arises rumination before this Court is whether the Petitioner/Appellant/Complainant had issued Ex.P5 notice dated 03.01.2011 in a valid manner and that too, quite in confirmity with Section 138 of Negotiable Instruments Act. However, this Court on going through Ex.P5 notice dated

03.01.2011 is of the considered view that the Petitioner had only claimed a sum of Rs.5,11,200/- towards the value of the dishonoured cheques within 15 days from the date of receipt of the notice. In fact, the Petitioner/Appellant/Complainant's Ex.P5 notice in the considered opinion of this Court does not satisfies the ingredients of Section 138(b) of the Negotiable Instruments Act. To put it precisely, Ex.P5 notice is invalid and it is not quite in tune with the ingredients of Section 138(b) of the Act. Furthermore, Ex.P5, a cumulative notice without quantifying exactly as what was the amount due under the dishonoured cheques would not satisfy the requirement of Law in the considered opinion of this Court. Viewed in that perspective, on this score alone this Court is not inclined to grant 'Special Leave' to the Petitioner and accordingly, the Special Leave Petition is dismissed.

20.09.2016

Index: Yes
Internet: Yes

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