

Crl.O.P.No.19298 of 2016
in
Crl.A.Sr.No.36164 of 2016

M.VENUGOPAL, J.

Heard both sides.

2.The Court Notice for the Respondent/Accused was served on 17.09.2016. Today when the matter has come up for hearing, there is no representation before this Court on the side of the Respondent either in person or through Learned Counsel. As such, this Court proceeds to deal with the present Criminal Original Petition on merits.

3.It comes to be known that the Petitioner/Appellant/Complainant has focused the instant Criminal Original Petition before this Court seeking 'Grant of Special Leave' to prefer an Appeal, as an aggrieved person, as against the Judgment dated 04.07.2016 in S.T.C.No.45 of 2012 passed by the Learned Judicial Magistrate (Fast Track Court No.I), Erode.

4.It transpires that the trial Court, while passing the

impugned Judgment on 04.07.2016 in S.T.C.No.45 of 2012, at paragraph 11, had, inter alia, observed that '... the present Complainant (Appellant) had not produced evidence through witnesses and documents to show that he was in possession of Rs.10,00,000/- and therefore, opined that a suspicion had arisen as to whether the Complainant (Appellant) had given a sum of Rs.10,00,000/- on 02.10.2011 and therefore, was of the considered view that the initial burden in this regard was not established by the Complainant (Appellant)' and further proceeded to observe that the case cheque amount was not one which should come to the Complainant (Appellant) as a 'Legally Enforceable Debt' and ultimately, came to the consequent conclusion that the Complainant (Appellant) had not established beyond doubt to the effect that the Respondent/Accused had given the case cheque for the loan obtained and found him not guilty in respect of an offence under Section 138 read with 142 of the Negotiable Instruments Act, 1881 and acquitted him under Section 255 (1) Cr.P.C.

5.Challenging the Judgment of dismissal dated 04.07.2016 in S.T.C.No.45 of 2012 passed by the trial Court, the Appellant (Complainant) has preferred the instant Criminal Appeal in

Sr.No.36164 of 2016, contending that the trial Court had failed to take into account of a prime fact that the Respondent/Accused had failed to establish that he had given cheque to one Amudhasurabi, Panjabi Proprietor, but admitted the execution of the cheque.

6.That apart, the Learned Counsel for the Petitioner/Appellant projects an argument that the trial Court was not correct in observing that the Appellant (Complainant) had failed to establish the means to pay the said amount, contrary to the materials available on record.

7.Finally, it is the specific case of the Appellant/Complainant that the Respondent/Accused had borrowed a sum of Rs.10,00,000/- from him to meet out his urgent expenses and to discharge the said loan, had issued a post dated cheque in his favour for Rs.10,00,000/- dated 02.11.2011 bearing Cheque No.024786 drawn on HDFC Bank, Erode Branch and when it was presented for collection by the Appellant/Complainant on 03.11.2011 through Indian Bank, Perundurai Road Branch, Erode, the cheque was dishonoured owing to the reason 'Insufficient Funds' on 04.11.2011. Therefore, the Appellant had issued a statutory

Lawyer's Notice - Ex.P3 to the Respondent on 10.11.2011 which was received by the Respondent on 16.11.2011. Since the Respondent/Accused had failed to repay the loan amount in question, it is represented that the Appellant/Complainant had filed a complaint before the trial Court under Section 138 read with 142 of the Negotiable Instruments Act, 1881.

8.It is to be pointed out that the High Court has enough power to review the whole gamut of evidence tendered before the trial Court by the parties concerned and also the witnesses examined on their behalf. Of course, the High Court will give due weightage to the credibility of witnesses, the presumption of innocence in favour of an Accused etc. Before reversing an Order/Judgment of Acquittal, it is incumbent on the part of the Hon'ble High Court to consider each and every ground raised on behalf of the Appellant in regard to the Judgment of the Acquittal rendered by the trial Court and to examine as to whether the views expressed by the trial Court are inconsonance with the correct position of Law. If a Judgment of Acquittal is passed by the concerned trial Court, based on a perverse opinion or on an erroneous view taken by it in regard to either a point of Fact or point of Law or if there is a misreading of

evidence etc., then, in that event, the High Court can exercise its plenitude powers so as to set right the miscarriage of Justice that has occasioned in favour of the concerned party. However, if the Judgment of Acquittal is based on proper consideration of evidence of witnesses and on perusal of the concerned documents available on record and in case, if the Appellant/Complainant is not able to dislodge the Judgment rendered by the trial Court in a given case, then, the High Court cannot hesitate to affirm/confirm the Judgment passed by the trial Court concerned.

9. Be that as it may, as far as the present case is concerned, this Court, on going through the contentions advanced on behalf of the Petitioner/Appellant/Complainant, is of the earnest view that the said contentions require a detail/elaborate examination in the hands of this Court at the appropriate stage, viz., hearing of the main Appeal. Suffice it for this Court to point out that *ex facie* the Petitioner/Appellant/Complainant has made out a case for the 'Grant of Special Leave'.

M.VENUGOPAL.J,

Sgl

10.Viewed in that perspective, the Criminal Original Petition
filed by the Petitioner is allowed.

05.12.2016

Index : Yes / No

Internet : Yes / No

Sgl

Crl.O.P.No.19298 of 2016 in
Crl.A.Sr.No.36164 of 2016

<http://www.judis.nic.in>