

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.08.2017

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THE HONOURABLE MR. JUSTICE N.AUTHINATHAN

Crl.O.P. No.6652 of 2017
in Crl.A.SR.No.15069 of 2017

S.Jayaraman

.. Petitioner

versus

M.Raji

.. Respondent

PRAAYER : Criminal Original Petition filed under Section 378 (4) Cr.P.C. to grant leave to the appellant in preferring the above appeal before this Court as against the judgment dated 31.01.2017 made in C.C.No.3475 of 2011 passed by the learned Metropolitan Magistrate / Fast Track Court No.1, Egmore at Allikulam, Chennai District acquitting the respondent / accused in the proceedings for the commission of the offences 138 read with 142 of Negotiable Instrument Act, 1881.

For Petitioner

: Mrs.J.Ranjani Devan

for Mr.S.Palanivelayutham

For Respondent

: Mr.C.Sivanesan

ORDER

The petition has been filed by the petitioner seeking to grant leave to the petitioner to file an appeal against acquittal dated 31.01.2017 in C.C.No.3475 of 2011 on the file of the learned Metropolitan Magistrate / Fast Track Court No.1, Egmore at Allikulam, Chennai District.

2. The complainant in C.C.No.3475 of 2011 is the petitioner. He has filed the said complaint for the offence under Section 138 of the Negotiable Instruments Act. His case is that, he lent a sum of Rs.4,00,000/- to the respondent and the respondent agreed to repay the same with interest at the rate of 24%. The cheque in question was issued by the respondent for Rs.1,50,000/- for the partial discharge of the said debt. The cheque [bearing No.168993 dated 10.02.2011] was dishonoured when presented for collection through State Bank of India due to “funds insufficient” in the account of the respondent and it was informed by his Banker on 11.05.2011. The complainant issued legal notice [Ex.P.3] dated 01.06.2011 calling upon the respondent to pay the cheque amount. The respondent sent his reply on 08.06.2011. After receiving reply notice, the complainant has presented the present complaint on 23.06.2011.

3. The Trial Court has held that the petitioner has failed to prove the due execution of the cheque. The Trial Court acquitted the accused on the ground that the complaint has been filed before the expiry of 15 days for payment and the complaint was premature. Aggrieved by the judgment of the Trial Court, the petitioner intends to prefer an appeal. He filed the present petition seeking leave to file an appeal.

4. The learned counsel appearing for the petitioner would submit that the Trial Court erred in dismissing the complaint, as the respondent has admitted the execution of the cheque. The learned counsel would further submit that 15 days notice period was given only to the accused for payment and the Trial Court has erred in coming to the conclusion that the complaint was premature. The learned counsel relied on the judgment of the Hon'ble Supreme Court in **NARSINGH DAS TAPADIA vs. GOVERDHAN DAS PARTANI AND ANOTHER [AIR 2000 SC 2946]** and the judgment of the Allahabad High Court in **SMT. HEM LATA GUPTA vs. STATE OF U.P. AND ANOTHER [2002 CRI.L.J. 1522 (1)]** to submit that the Court has taken cognizance only after the expiry of 15 days and that, therefore the complaint was maintainable.

5. The learned counsel appearing for the respondent would submit that the complaint had been presented before the expiry of 15 days of the receipt of notice for payment and therefore, the Trial Court was justified in acquitting the respondent.

6. I have perused the grounds of appeal and the judgment of the Trial Court.

7. In **SMT. HEM LATA GUPTA vs. STATE OF U.P. AND ANOTHER** [2002 CRI.L.J. 1522 (1)] it has held thus: “bar of expiry of 15 days from date of service of notice is for taking cognizance and not for filing complaint”. However, in **YOGENDRA PRATAP SINGH vs. SAVITRI PANDEY & ANOTHER** [2014 CJ (SC) 627], a three Judge Bench of the Hon'ble Supreme Court has held that “a complaint filed before the expiry of 15 days from the date of receipt of notice issued under clause (c) of the proviso to Section 138 is not maintainable and the complainant cannot be permitted to present the very same complaint at any later stage”.

8. It is an admitted fact that the notice in terms of Section 138(b) of the Negotiable Instruments Act was received by the respondent only on 08.06.2011 and the complaint was filed before the expiry of the notice period of 15 days for payment. Action under Section 138 of the Negotiable Instruments Act can be taken only if a valid notice has been given to the drawer about the dishonour of cheque and he does not pay the cheque amount within 15 days of the serving of the notice. Cause of action for an action under section 138 of the Negotiable Instruments Act would arise in terms of Section 142(b) of the Negotiable Instruments Act only after the expiry of the notice period of 15 days for payment. In the case at hand, admittedly the complaint was presented

before the expiry of the notice period of 15 days for payment. As the complaint had been presented before the cause of action arose for an action under Section 138 of the Negotiable Instruments Act the Trial Court was justified in coming to the conclusion that the complaint was premature and liable to be dismissed. The Trial Court dismissed the complaint and acquitted the accused placing reliance on the judgment of the Hon'ble Supreme Court in **YOGENDRA PRATAP SINGH vs. SAVITRI PANDEY & ANOTHER [2014 CJ (SC) 627]**. This Court does not find any ground to hold a different view. It is not a fit case for grant of special leave to the petitioner.

9. In the result, this Criminal Original Petition is dismissed.

09.08.2017

Index : Yes / No
Internet : Yes

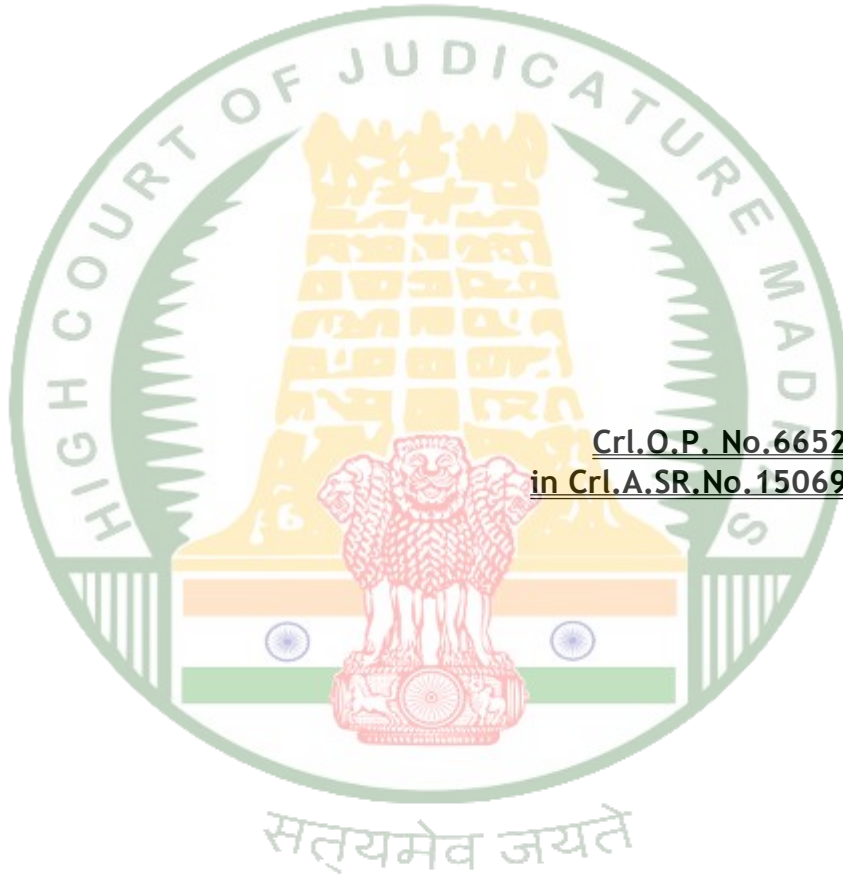
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To

- 1.The Metropolitan Magistrate /
Fast Track Court No.1,
Egmore at Allikulam, Chennai District.
- 2.The Public Prosecutor,
High Court, Madras.

N.AUTHINATHAN, J.

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