

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2017

CORAM

THE HONOURABLE Mr.JUSTICE N.AUTHINATHAN

CRL.O.P.No.17925 of 2016

in

Crl.A.No.S.R.25982 of 2016

Saravanan

... Appellant

Vs

Khader Ali

... Respondent

PRAYER: Criminal Original Petition filed under Section 378(4) of the Criminal Procedure Code to grant leave to file appeal against the judgement of acquittal dated 16.09.2015 made in S.T.C.No.240/2013 on the file of Judicial Magistrate No.II, Pollachi.

For Petitioner :Mr.M.N.Balakrishnan

For Respondents :Mr.R.Karunakaran.

ORDER

The complainant in S.T.C.No.240 of 2013 on the file of the Judicial Magistrate. No.II, Pollachi is the petitioner herein. He has filed the complaint for the offence under Section 138 of Negotiable Instruments Act on the allegation that the respondent has issued the cheque in question for the

discharge of his liability to the tune of Rs.5,25,000/- and when presented for encashment, it was dishonoured. The respondent pleaded not guilty. The Trial Court has acquitted the respondent, as the cheque was issued in favour of a Proprietary concern "Ganesh Maligai" and as the complainant is not the proprietor of the concern and he was not duly authorized by the proprietor. The complaint filed by him was held to be not maintainable.

2. The learned counsel for the petitioner would submit that the complainant is the power of attorney of "Ganesh Maligai " and he has got every right to proceed with the case and that therefore, it is a fit case for appeal.

3. The learned counsel for the respondent opposed the application and stated that admittedly, the cheque was issued in the name of "Ganesh Maligai ", which is a proprietary concern and the present complainant is not the proprietor.

4. A perusal of the records would reveal that the cheque was issued in favour of "Ganesh Maligai". Admittedly, the petitioner is not the proprietor of "Ganesh Maligai". He would also admit in his evidence that his brother is the proprietor. He has not produced any authorization letter to

represent his brother, namely the Proprietor of "Ganesh Maligai". There is no authorization or power of attorney in favour of the petitioner for filing the complaint under Section 138 of Negotiable Instruments Act. Therefore, the present complaint cannot be entertained. The learned counsel for the petitioner has not been able to show any material, which authorizes the petitioner to file the complaint. As it has been made clear that the petitioner is neither the proprietor nor an authorized agent to represent the proprietor, the Trial Court was right in dismissing the complaint as not maintainable. I do not find any valid reason to hold a different view. Therefore, I am of the considered view that there is no case for granting leave.

5. In the result, the Criminal Original Petition dismissed. Consequently, connected CrI.A.SR25982 of 2016 is rejected.

07.09.2017

Index : Yes/No
Internet : Yes
mst

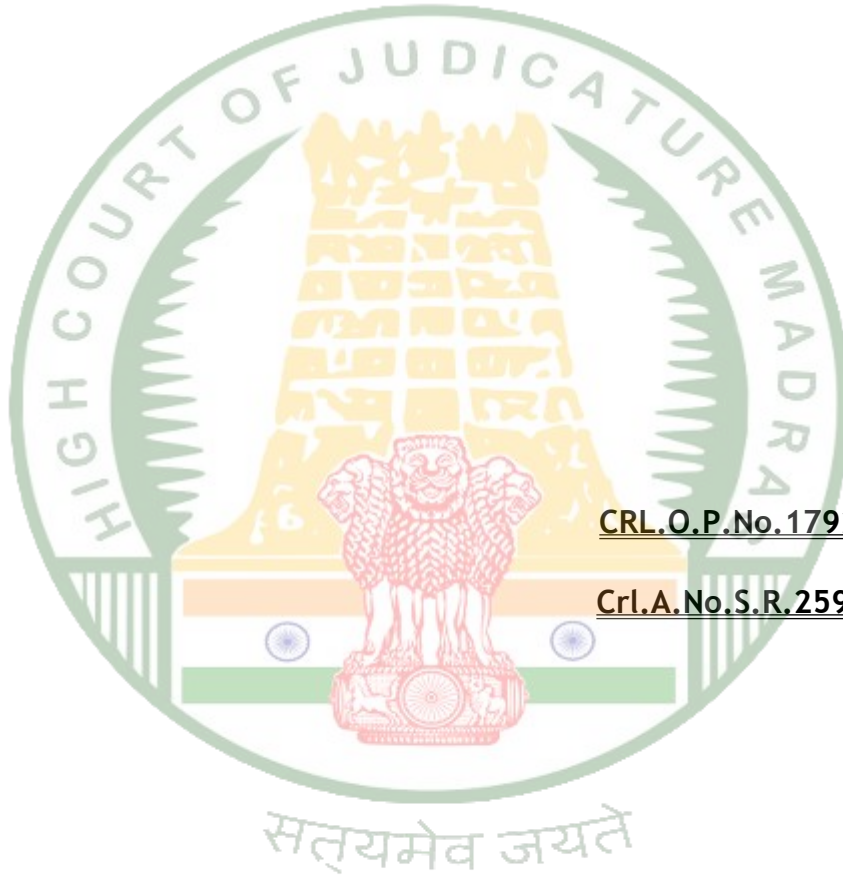
To

The Judicial Magistrate. No.II,
Pollachi.

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N.AUTHINATHAN, J.

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