

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.08.2017

CORAM

THE HONOURABLE MR. JUSTICE N.AUTHINATHAN

Crl.O.P. No.19469 of 2016  
in Crl.A.SR.No.4708 of 2016

R.Sudhakar

.. Petitioner

M.G.Chandra

.. Respondent

**PRAYER** : Criminal Original Petition filed under Section 378 (4) Cr.P.C. to grant leave to prefer appeal against the judgment of acquittal passed in C.C.No.218 of 2014 passed by the learned Judicial Magistrate [Fast Track] Court, Alandur.

For Petitioner : Mr.R.Chandrasudan  
For Respondent : Mr.V.Subramanian

**ORDER**

सत्यमेव जयते

The petition has been filed by the petitioner seeking to grant leave to the petitioner to file an appeal against acquittal dated 08.10.2015 in C.C.No.218 of 2014 on the file of the learned Judicial Magistrate [Fast Track] Court, Alandur.

2. The complainant in C.C.No.218 of 2014 is the petitioner. He has filed the said complaint for the offence under Section 138 of the Negotiable Instruments Act. The complaint has been filed on the allegations that the respondent herein borrowed a sum of Rs.15,00,000/- [Rs.7,50,000/- on 06.05.2013 and Rs.7,50,000/- on 18.05.2013] from him and agreed to repay the same with interest at the rate of 2%. She has paid interest for the first month during June 2013 and thereafter, she has not paid any payment. For the discharge of the said liability, she has handed over two post-dated cheques [one cheque bearing No.030767 for Rs.9,00,000/- and another cheque bearing No.030768 for Rs.9,00,000/-] dated 19.09.2014. Those cheques were dishonoured when presented for collection through Indian Overseas Bank, Velachery, due to "account closed". The complainant issued legal notice [Ex.R.3] dated 28.09.2014 calling upon the respondent to pay the cheque amount. The respondent sent her reply on 10.10.2014. After receiving reply notice, the complainant has presented the present complaint on 28.10.2014.

3. The Trial Court has held that the petitioner has failed to prove that the cheques in question were issued for legally enforceable debt and taking into other circumstances, acquitted the accused. 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 accepting the case of the respondent. According to him, the Trial Court without appreciation of evidence dismissed the complaint.

5. The learned counsel appearing for the respondent advanced his arguments in support of the judgment. According to him, there are enough materials to show that the respondent has rebutted the presumptions and there is no evidence to show that the cheques were issued for the discharge of any legally enforceable debt.

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

7. It is not in dispute that the cheques belong to the respondent and they bear the signatures of the respondent. Therefore, it can be presumed that the cheques were issued for the discharge of legally enforceable debt. It is to be seen whether the respondent has rebutted the said presumptions. It is well settled that the onus of proof on the respondent is not as heavy as that of the prosecution. For rebutting the presumption, the respondent has to raise a

probable defence and for that purpose, he can rely on the evidence adduced by the complainant. The standard of proof is preponderance probability [vide **M.S.NARAYANA MENON ALIAS MANI vs. STATE OF KERALA AND ANOTHER [(2006) 6 SCC 39]**].

8. The definite case of the complainant is that the respondent borrowed Rs.7,50,000/- on 06.05.2013 and Rs.7,50,000/- on 18.05.2013. The cheques in question were dated 19.09.2014. However, in his evidence as P.W.1, he has stated that he borrowed money from his relative to lend to the respondent but he has not chosen to examine his relative. Admittedly, he paid income tax till 2012. He ought to have produced his accounts. Therefore, adverse interference should be drawn against him. Under these circumstances, it can be safely held that the respondent has rebutted the presumptions drawn under Section 138 and 139 of the Negotiable Instruments Act.

9. It is pertinent to note that though the complainant claimed that the respondent agreed to pay interest at the rate of 2%, the cheques were issued for Rs.9,00,000/- each for the discharge of the alleged liability. It is impossible to believe that the complainant lent Rs.15,00,000/- without obtaining any documentary proof. Except the disputed cheques, there is no reliable evidence has been produced. Therefore, the Trial Court was justified

in coming to the conclusion that the complainant has failed to prove his case beyond reasonable doubt.

10. The Trial Court carefully considered the testimony of the witnesses and took into account the facts and circumstances of the case and held that the complainant failed to prove his case. It is well settled unless the Appellate Court finds that the view taken by the Trial Court is unreasonable or perverse, it should not interfere with an order of acquittal. The view taken by the Trial Court are reasonably possible. Therefore, the finding of the acquittal cannot be disturbed. The petitioner is not able to show any material to hold a different view. It is not a fit case for grant of special leave to the petitioner.

11. In the result, this Criminal Original Petition is dismissed. Consequently, connected Crl.A.SR.No.4708 of 2016 is rejected.

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Index : Yes / No

Internet : Yes

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To

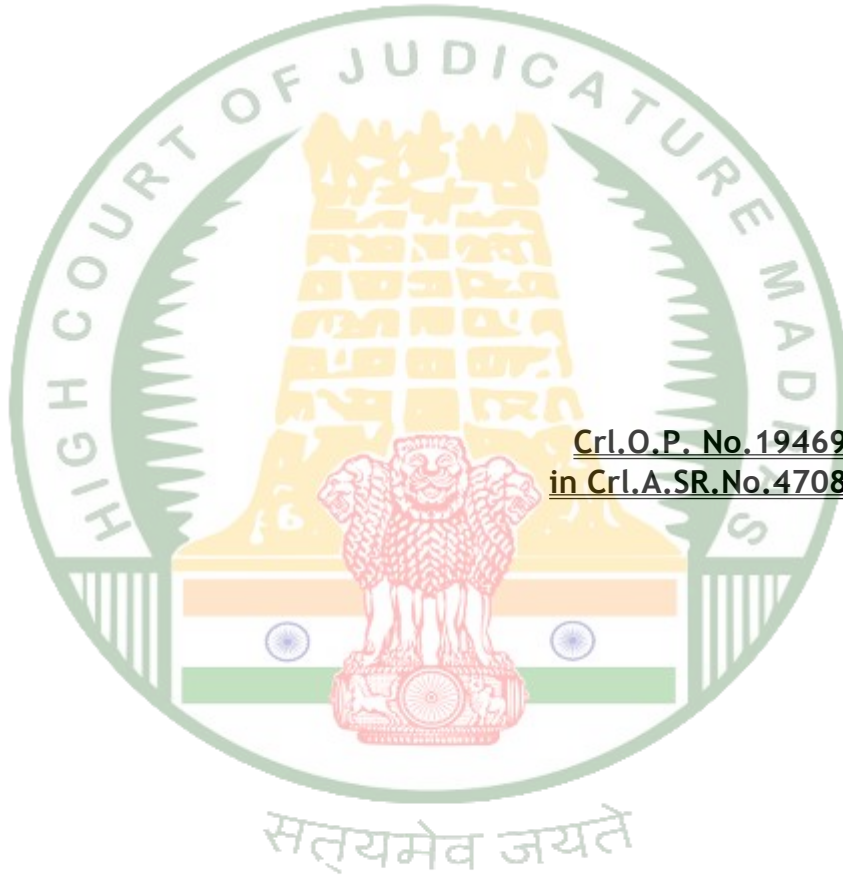
1.The Judicial Magistrate  
[Fast Track] Court, Alandur.

2.The Public Prosecutor,  
High Court, Madras.

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N.AUTHINATHAN, J.

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