

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.08.2017

CORAM

THE HONOURABLE MR. JUSTICE N.AUTHINATHAN

Crl.O.P. No.25547 of 2016
in Crl.A.SR.No.42403 of 2016

P.S.K.Finance & Chit Funds Ltd.,
Rep. by Managing Director,
K.Sivakumar
S/o.T.K.Kuppusamy,
No.395, Bazaar Street,
Salem - 1.

.. Petitioner

versus

1.Rajendran
2.Balan

.. Respondents

PRAYER : Criminal Original Petition filed under Section 378 (4) Cr.P.C. to grant leave to prefer appeal under Section 378 of Criminal Procedure Code against the order of acquittal dated 18.08.2016 in C.C.No.723 of 2004 on the file of the learned Judicial Magistrate No.I, Salem.

For Petitioner : Mr.A.Kandasami
For Respondents : No Appearance

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ORDER

The petition has been filed by the petitioner seeking to grant leave to the petitioner to file an appeal against acquittal dated 18.08.2016 in C.C.No.723 of 2004 on the file of the learned Judicial Magistrate No.I, Salem.

2. The complainant in C.C.No.723 of 2004 is the petitioner. The complainant is a Company and it is represented by its Managing Director. He has filed the said complaint for the offence under Section 138 of the Negotiable Instruments Act. The Trial Court has held that in the absence of company resolution, the complainant cannot maintain the complaint. The Trial Court has also held that the Managing Director cannot delegate his power and that, the petitioner has failed to prove that the cheque in question was issued for legally enforceable debt and taking into other circumstances, acquitted the accused. Aggrieved by the judgment of the Trial Court, the petitioner, who intended to prefer an appeal filed the present petition seeking leave to file an appeal.

3. The learned counsel appearing for the petitioner would submit that in the absence of challenge to the maintainability of the complaint before the Trial Court, the question of producing the copy of the resolution does not arise and that, the Trial Court erred in dismissing the complaint on the ground that it is not maintainable. He would further submit that the petitioner is a chit fund company and the respondent is a subscriber and he became the successful bidder. However, he failed to repay the prize amount as agreed and for the discharge of the said liability, the cheque in question was issued and the Trial Court has failed

to take note of the said transaction. In support of his contention, the learned counsel relied on the judgment of the Hon'ble Supreme Court in **A.C.NARAYANAN vs. STATE OF MAHARASHTRA [(2015) 12 SCC 203]** and the judgment of this Court in **SAGAYADURAI vs. J.D.ELECTRONICS [1997 (II) CTC 478]**.

4. Despite notice, the respondents have not turned up. Their names are also printed in the cause list.

5. I have perused the grounds of appeal and the judgment of the Trial Court. The petitioner raised several points of fact and law. It is also the grievance of the petitioner that the Trial Court has not properly appreciated the materials made available. In these circumstances and keeping in mind, the right of the victim to prefer an appeal under the proviso to Section 372 Cr.P.C. I am inclined to grant leave to the petitioner.

6. In the result, the Criminal Original Petition is allowed.

08.08.2017

Index : Yes / No
Internet : Yes
sri

N.AUTHINATHAN, J.

sri

To

1.The Judicial Magistrate No.I, Salem.

2.The Public Prosecutor,
High Court, Madras.



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