



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.02.2018

CORAM

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THE HONOURABLE MR. JUSTICE P.N.PRAKASH

CRL.O.P. (MD) No.1358 of 2018
in
CRL.A. (MD) SR.No.26606 of 2007

A.Baskaran : Petitioner/Appellant

Vs.

N.Sathishkumar : Respondent/Respondent

Prayer in CRL.O.P. (MD) No.1358 of 2018:- Petition is filed under Section 378(4) of the Code of Criminal Procedure to grant special leave to appeal against the order of acquittal passed by the learned Additional Sessions Judge, Fast Track Court No.2, Madurai in C.A.No.109 of 2006, dated 15th October, 2007.

Prayer in CRL.A. (MD) SR.No.26606 of 2007:- Appeal is filed under Section 378 r/w 382 of the Code of Criminal Procedure to call for the records in C.A.No.109 of 2006 on the file of the learned Additional Sessions Judge, Fast Track Court No.2, Madurai and set aside the order of acquittal dated 15th October, 2006 and convict the respondent and award adequate compensation to the appellant by restoring the order passed by the Trial Court and pass such or other suitable and appropriate orders in the circumstances as this Court deem fit and necessary.

For Petitioner : Mr.D.Shanmugaraja Sethupathi

For Respondent : Mr.K.Viralinathan

ORDER

For the sake of convenience, the parties will be referred to as the complainant and the accused.

2. The complainant initiated a prosecution in S.T.C.No.64 of 2005 before the learned Judicial Magistrate No.1, Madurai, under Section 138 r/w 142 of the Negotiable Instruments Act against the accused, in which, by judgement dated 11.07.2006, the accused was convicted for the offence under Section 138 r/w 142 of the Negotiable Instruments Act and was sentenced to undergo one year simple imprisonment and fine of Rs.5,000/-, in default, to undergo three months simple imprisonment. Challenging the conviction and



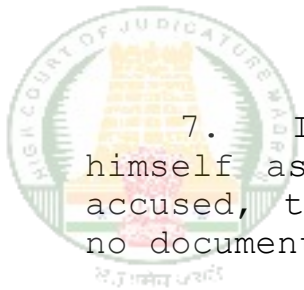
sentence, the accused filed CrI.A.No.109 of 2006, which was heard by the learned Additional Sessions Judge, Fast Track Court No.2, Madurai, in which, the accused was acquitted on 15.10.2007. Challenging the acquittal, the complainant filed the present appeal with a delay of 1138 days in re-presentation, which has been condoned by this Court, by order dated 03.01.2018 in M.P.(MD) No.1 of 2011 and the Special Leave Petition has been taken up for disposal.

3. Heard Mr.D.Shanmugaraja Sethupathi, learned counsel appearing for the petitioner/complainant and Mr.K.Viralinathan, learned counsel appearing for the respondent/accused.

4. It is a trite that special leave to appeal is not automatic and that only when this Court is convinced that there are *prima facie* materials to show that the order of acquittal suffers from infirmity or illegality warranting interference, can leave be granted.

5. It is the case of the complainant that he was doing building contract business jointly with the accused and that the bills and cheques were given in the name of the accused; that the contract work was done by both the complainant and the accused and the cheques and amounts were given by the Government in the name of the accused; that the complainant is entitled to half share in the whole amount; that as per the accounts of the said contract, the accused was liable to give Rs.7,50,000/- to the complainant; that the accused has also acknowledged his liability and both the complainant and the accused entered into an agreement on 29.08.2002; that as per the agreement, the accused had given the impugned cheque for Rs.7,50,000/- on 20.08.2003 and when the complainant deposited the same, it was returned unpaid with an endorsement "Exceeds Arrangements"; that the complainant sent a legal notice dated 20.09.2003 to the accused; that the accused received the legal notice and promised to pay the cheque amount of Rs.7,50,000/-; that when the complainant demanded to discharge the amount, the accused issued another cheque for Rs.7,50,000/- on 05.11.2003; that the complainant presented the said cheque on 05.11.2003 and the same was also dishonored on 08.11.2003 for insufficiency of funds; that the complainant sent a legal notice dated 06.12.2003 to the accused calling upon the accused to make the payment; that the accused received the notice on 09.12.2003 and did not make the payment and hence, the complaint.

6. It is the defence of the accused that the complainant had not entered into any agreement with the accused; that the accused has obtained a loan of Rs.1,00,000/- from the complainant and repaid the loan with metre interest; that he has paid Rs.4,00,000/- towards the loan and that adjusting all the amounts towards interest, the complainant demanded more and more interest



7. In order to prove the case, the complainant examined himself as P.W.1 and marked Exs.P.1 to P.4. On behalf of the accused, three witnesses were examined namely D.W.1 to D.W.3 and no document was made on his side.

8. It is true that the burden under Section 139 of the Negotiable Instruments Act would shift to the accused when once it is shown that he had executed the cheque in question. But, however, the Supreme Court in **Rangappa vs. Sri Mohan** reported in **2010 (11) SCC 441** has held that the said burden can be discharged by preponderance of probabilities and not by proof beyond reasonable doubt. It is the quality of proof that is required to be adduced by the complainant. It is seen that except *ipse dixit* of the complainant, he had not produced any other corroborative materials to show that he was doing the contract work in partnership with the accused. However, on behalf of the accused, three witnesses were examined to show that the accused had borrowed Rs.50,000/- from the complainant and the impugned cheque was given only towards the said loan. The complainant had not produced any material to prove the alleged debt, but, whereas, the accused had examined three witnesses to show that the debt was not as alleged by the complainant, but, had arisen on account of a sum of Rs.50,000/- that is said to have been borrowed by the accused from the complainant.

9. In such view of the matter, this Court does not find any serious infirmity in the appreciation of evidence of the witnesses by the Appellate Court warranting interference.

10. In the result, this Court is of the view that this is not a fit case to grant leave to appeal. Hence, this Special Leave Petition is dismissed. Consequently, CRL.A.(MD)SR.No.26606 of 2007 stands rejected.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Additional Sessions Judge,
Fast Track Court No.2,
Madurai.
2. The Judicial Magistrate No.I,
Madurai.



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The Record Keeper, (2 COPIES)
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.Raj&Pathy, Advocate Sr.No.48798

TA/SML

VB/CVC/SAR1/01.03.2018/3P/6C

Order made in

CRL.O.P. (MD) No.1358 of 2018
in
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