



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.(MD) No.4601 of 2018
in
Crl.A.(MD) No.SR491 of 2009

Lingasamy ... Petitioner / Appellant
vs.

Paul Raj ... Respondent / Accused

PRAYER (Crl.O.P.(MD) No.4601 of 2018): Criminal Original Petition filed under Section 378(4) of Cr.P.C., praying to grant special leave to appeal from the order and judgment passed in S.T.C.No.3107 of 2007 dated 07.10.2008 on the file of Judicial Magistrate No.2, Srivilliputhur.

PRAYER (Crl.A.(MD) No.SR491 of 2009): Criminal Appeal filed under Section 378 Cr.P.C., against the judgment passed in S.T.C. No.3107 of 2007 dated 07.10.2008 on the file of Judicial Magistrate No.2, Srivilliputhur.

For Petitioner : Mr.T.Muruganantham

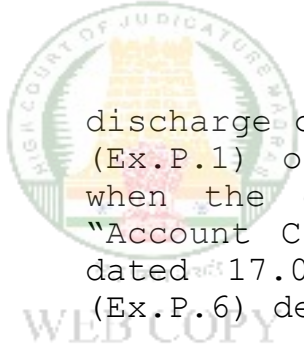
For Respondent : Mr.M.Ashokkumar

O R D E R

For the sake of convenience, the petitioner and the respondent herein are referred to as "the complainant" and "the accused" respectively in this order.

2.The complainant initiated a prosecution in S.T.C.No.3107 of 2007 before the Judicial Magistrate No.II, Srivilliputhur under Section 138 of the Negotiable Instruments Act against the accused, in which the accused was acquitted on 07.10.2008. Challenging the acquittal of the accused in the year 2008, the complainant filed the present appeal with a delay of 34 days. Therefore, the complainant has filed M.P.(MD) No.1 of 2009 in Crl.A.(MD) SR 491 of 2009 under Section 5 of the Limitation Act, which was allowed by this Court today.

3.Coming to the Special Leave Application, it is settled law that leave to appeal against acquittal is not automatic. It is the case of the complainant that the accused borrowed Rs.1,00,000/- by executing Demand Promissory Note (Ex.P.7) on 13.09.2004 and in



discharge of the said liability the accused gave the impugned cheque (Ex.P.1) on 14.02.2006 for Rs.1,30,000/- including interest; that when the cheque was presented it was returned with endorsement "Account Closed" and that the complainant issued statutory notice dated 17.08.2006 (Ex.P.4), for which the accused gave a reply (Ex.P.6) denying the allegations.

4.It is the defence of the accused that the impugned cheque and the promissory note were not given to the complainant and it was given to one Sakthivel and the said Sakthivel had handed over the pronote and the cheque to the complainant to file the present prosecution.

5.It is true that under Section 139 of the Negotiable Instruments Act, the burden shifts on the accused when once the complainant establishes the minimum facts. In this case, the accused had examined two witnesses, namely, D.W.1 - Vellaisamy and D.W.2 - Lingasamy and marked Exs.D.1 to D.5 to show that the dispute was essentially between the accused and one Sakthivel and the impugned cheque and promissory note were given to the said Sakthivel and not to the complainant. The trial Court has given sound reasons for accepting the reasons adduced by the accused and rejecting the case of the complainant. Thus, if two views are possible, the view that is in favour of the accused merits acceptance. Hence, this is not a fit case to grant leave to appeal.

6.Accordingly, this Criminal Original Petition is dismissed and consequently, CrI.A.(MD) No.SR491 of 2009 is rejected.

Sd/-

Assistant Registrar(CrI.side)

/True Copy/

Sub Assistant Registrar

To:

The Judicial Magistrate No.II,
Srivilliputtur.

+1cc to Mr.M.ASHOK KUMAR, Advocate, S.R.No.57170

CrI.O.P.(MD) No.4601 of 2018
in
CrI.A.(MD) No.SR491 of 2009

sj
SH/JC/SAR-3: 02.05.2018: 2P/3C