



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.03.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.(MD)No.4708 of 2018
in
Crl.A.(MD)No.SR3573 of 2010
and
Crl.A.(MD)No.SR3573 of 2010

R.Selvaraj : Petitioner/Appellant/Complainant

-Vs.-

M.Kulam Thasthakir : Respondent / Respondent / Accused

Prayer in Crl.O.P.(MD)No.4708 of 2018: Criminal Original Petition is filed under Section 378 (4) Cr.P.C., to grant Special Leave to appeal before this Court against the judgment of the Judicial Magistrate No.IV, Madurai in S.T.C.No.1626 / 2007 by judgment dated 17.11.2009.

Prayer in Crl.A.(MD)No.SR3573 of 2010: Criminal Appeal is filed under Section 378 Cr.P.C., to call for the records pertaining to the case in S.T.C.No.1626 of 2007 on the file of the Judicial Magistrate No.IV, Madurai, and set aside the same.

For Petitioner : Mr.Sribalaji

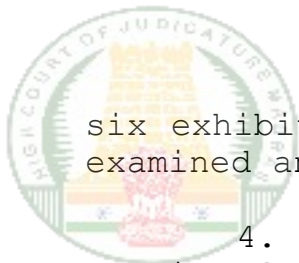
O R D E R

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

2. It is the case of the complainant that on 05.11.2006, the accused borrowed a sum of Rs.50,000/- and in discharge of liability, he issued a cheque for Rs.50,000/- dated 04.12.2006; that the cheque was dishonoured for funds insufficient; that the complainant issued a legal notice dated 16.12.2006 and since the accused did not make the payment, the complainant initiated a prosecution in S.T.C.No.1626 of 2007 before the learned Judicial Magistrate No.IV, Madurai, under Section 138 of the Negotiable Instruments Act, 1881, against the accused.

<https://hcservices.ecourts.gov.in/hcservices/>

3. On behalf of the complainant, one witness was examined and



six exhibits were marked. On behalf of the accused, one witness was examined and one exhibit was marked.

4. The trial Court, by judgment dated 17.11.2009 has acquitted the accused, challenging which, the complainant has filed the present appeal against the acquittal with a delay of 13 days. Therefore, the complainant has filed M.P.(MD)No.2 of 2011 in CrI.A. (MD)No.SR3573 of 2010 under Section 5 of the Limitation Act for condonation of delay, which has been allowed by this Court.

5. Coming to the Special Leave Application, it is a trite law that Leave to Appeal against the acquittal is not automatic. Leave can be granted only if it is shown that there are infirmities in the order of the acquittal.

6. On reading of the trial Court order, it is seen that the complainant had sent a statutory notice to No.6, Samiyapillai street, Ismail Compound, Thirupparankumdrum, but, whereas, in the complaint, the address of the accused is given as "Sri Kannan Illam, Plot.No.14, Anbu Nagar, S.Alangulam". Since the complainant had given wrong address of the accused, the statutory notice was not served on the accused and it was returned to the complainant.

7. In such circumstances, the trial Court held that the complainant had failed to issue a proper statutory notice to the accused. This Court does not find any infirmity in the order of the acquittal passed by the trial Court. Hence, this Criminal Original Petition is dismissed. Consequently, the Criminal Appeal is rejected in the SR stage itself.

Sd/-
Assistant Registrar (W)

/True Copy/

Sub Assistant Registrar

To

The Judicial Magistrate No.IV,
Madurai.

+ 1 CC TO M/s.MARIA ROSELINE, ADVOCATE IN SR No. 57730

SM

TE/KK/SAR-3 : 11/04/2018 : 2P/3C

Order made in
CrI.O.P.(MD)No.4708 of 2018 in
CrI.A.(MD)No.SR3573 of 2010 and
CrI.A.(MD)No.SR3573 of 2010
Dated:22.03.2018