



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.03.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.(MD)No.4799 of 2018
in
Crl.A.(MD)SR.No.15272 of 2011
and
Crl.A.(MD)SR.No.15272 of 2011

Palanisamy : Petitioner/Appellant/ Complainant

Vs.

Fathima Beevi : Respondent/Respondent/ Accused

Prayer in Crl.O.P.(MD)No.4799 of 2018:- Petition is filed under Section 378(4) of the Criminal Procedure Code to grant leave to the petitioner to file this Criminal Appeal against the judgment made in S.T.C.No.747 of 2007 on the file of the learned Judicial Magistrate No.II, Trichy, dated 30.11.2010.

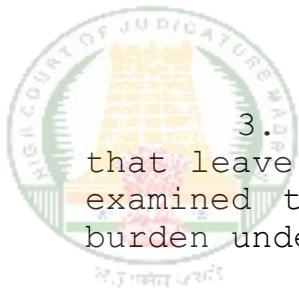
Prayer in Crl.A.(MD)SR.No.15272 of 2011:- Appeal is filed under Section 378 of the Criminal Procedure Code praying to set aside the order passed in S.T.C.No.747 of 2007 on the file of the learned Judicial Magistrate No.II, Trichy, dated 30.11.2010 and allow the Criminal Appeal.

For Petitioner : Mr.N.Sankar Ganesh

O R D E R

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.747 of 2007 before the learned Judicial Magistrate No.II, Trichy, under Sections 138 and 142 of the Negotiable Instruments Act against the accused, in which, the accused was acquitted on 30.11.2010. Challenging the acquittal, the complainant has filed the present appeal against acquittal with a delay of 146 days. Therefore, the complainant filed a petition in M.P.(MD)No.1 of 2011 in Crl.A.(MD)SR.No.15272 of 2011 under Section 5 of the Limitation Act to condone the delay, which has been allowed by this Court today.



3. Coming to the Special Leave Application, it is a trite law that leave to appeal is not automatic. In this case, the accused has examined two witnesses and marked 7 Exhibits for discharging the burden under Section 139 of the Negotiable Instruments Act.

4. In Rangappa vs. Sri Mohan reported in 2010 (11) SCC 441, the Supreme Court has held that the accused can discharge the burden under Section 139 of the Negotiable Instruments Act by preponderance of probabilities. The Trial Court has taken into consideration the evidence adduced by the complainant and the accused and has given a finding that the complainant had failed to prove the offence against the accused.

5. In Arulvelu and another v. State [2009(10) SCC 206], the Supreme Court has held that when there are two views possible, the view that supports the case of the accused should merit acceptance.

6. In the light of the above, this Court is of the view that this is not a fit case for granting Special leave to appeal. Hence, the Special Leave Application is dismissed. Consequently, the connected Crl.A. (MD) SR.No.15272 of 2011 stands rejected.

Sd/-
Assistant Registrar(P&A)

/True copy/

Sub Assistant Registrar

To
The Judicial Magistrate No.II,
Trichy.

COPY TO:

1. The Section Officer, **(2 Copies)**
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

Order made in
Crl.O.P. (MD) No.4799 of 2018
in
Crl.A. (MD) SR.No.15272 of 2011
and
Crl.A. (MD) SR.No.15272 of 2011
Dated: 23.03.2018

SML

MS/SKN-RSK/SAR-3/13.04.2018/2P.4C