

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.09.2020

PRONOUNCED ON : 15.09.2020

CORAM:

THE HON'BLE MR. JUSTICE P.N.PRAKASH

Crl.O.P. No.13076 of 2020 in Crl.A.SR.No.22307 of 2020

Sree Gokulam Chit & Finance Co. (Pvt.) Ltd.
represented by its Senior Business Manager
B.Saji Kumar
S/o Balakrishna Nair
Sree Sai Towers
No.1064/8, Post Office Road
Hosur, Krishnagiri District 635 109

Petitioner

vs.

K. Amresh

Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. seeking to grant special leave to appeal against the judgment and order dated 28.01.2020 acquitting the respondent in S.T.C. No.211 of 2011 on the file of the Judicial Magistrate Court (FTC), Hosur.

For petitioner Mr. L. Rajasekar

ORDER

This case was taken up through video conferencing.

2 For the sake of convenience, the petitioner and the respondent will be referred to as the complainant and the accused respectively.

3 It is the case of the complainant that the accused had subscribed a chit on 01.08.2009, towards which, he gave a cheque for Rs.6,00,092/- dated 11.08.2009, which, when presented, was dishonoured on 12.08.2009 on the ground "funds insufficient"; the complainant issued a statutory notice dated 19.08.2009, which was not served on the accused, but was returned to the complainant on 24.08.2009; hence, the complainant initiated a prosecution in S.T.C. No.211 of 2011 in the Court of the Judicial Magistrate, (FTC), Krishnagiri, against the accused for the offence under Section 138 of the NI Act.

4 From the side of the complainant, one Shaji Kumar was examined as P.W.1 and five exhibits were marked. From the side of the accused, no witness was examined nor was any document marked.

5 The trial Court, after considering the evidence on record, acquitted the accused by order dated 28.01.2020, aggrieved by which, the complainant has preferred the instant criminal original petition seeking leave under Section 378(4) Cr.P.C. to prefer an appeal challenging the order of acquittal.

6 Heard Mr. L. Rajasekar, learned counsel for the complainant.

7 It is trite that leave under Section 378(4) Cr.P.C. to file an appeal against acquittal is not automatic and only if this Court is satisfied that the order of acquittal warrants interference, can leave be granted.

8 The trial Court has found that Shaji Kumar (P.W.1) was not acquainted with the facts of the case and that he was not even able to depose about the actual debt and the circumstances under which the impugned cheque was obtained from the accused. Further, when the accused was examined under Section 313 Cr.P.C., he clearly stated that the impugned cheque was not issued in 2009. That apart, the complainant had not adduced sufficient materials to prove the debt and therefore, the trial Court has returned a finding that the debt has not been proved by the complainant.

9 This Court does not find any serious infirmity in the order of acquittal passed by the trial Court warranting grant of leave to the complainant to file an appeal.

In the result, this criminal original petition is dismissed. As a sequel, the criminal appeal is dismissed at the SR stage itself.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

cad

To:

The Judicial Magistrate Court (FTC)

Hosur

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AJS (CO)

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