IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 08.09.2020

DELIVERED ON: 16.09.2020

CORAM:

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

Crl.O.P. No.13911 of 2020 in Crl.A.SR.No.23072 of 2020

A. Mani

Petitioner /Appellant

vs.

G. Murugan

Respondent/Respondent

Criminal Original Petition filed under Section 378(4) Cr.P.C. seeking grant special leave and permit the petitioner to prosecute the above appeal filed against the order of acquittal dated 06.07.2018 made in C.C. No.2977 of 2011 on the file of the Metropolitan Magistrate Court (FTC-IV), George Town, Chennai.

For petitioner Mrs. R. Shase

- - - -

ORDER

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

2 It is the case of the complainant that the accused borrowed Rs.9 lakhs for his business needs and executed a promissory note as security; towards the said debt, the accused gave a cheque bearing no.177982 dated 01.03.2011 drawn on State Bank of India, Gobichettipayalam Branch, for a sum of Rs.9 lakhs; when the complainant presented the cheque, it was returned with the endorsement "insufficient funds"; the complainant issued a statutory demand notice dated 21.07.2011 to the accused, for which, the accused issued a reply notice dated 30.07.2011 disputing the very debt; hence, the complainant initiated a prosecution in C.C. No.2977 of 2011 under Section 138 of the Negotiable Instruments Act, 1881, in the Court of the Metropolitan Magistrate (FTC No.IV), George Town, Chennai, against the accused.

3 The complainant examined himself as P.W.1 and marked seven exhibits. The accused examined himself as D.W.1 and marked five exhibits.

4 After considering the evidence on record, the trial Court, by judgment and order dated 06.07.2018 in C.C. No.2977 of 2011, acquitted the accused. Aggrieved by the acquittal, the complainant preferred an appeal in Crl.A. No.441 of 2018 in the Court of Session, Chennai, in the light of the law laid down by a Full Bench of this Court in S. Ganapathy vs. N. Senthilvel[1]. The said appeal was heard by the I Additional District and Sessions Judge, Chennai, who, by judgment and order dated 21.01.2020, confirmed the order of acquittal passed by the trial Court.

5 The law laid down by the Full Bench of this Court in S. Ganapathy (supra) came to be reversed by a Full Bench of this Court in K.Rajalingam vs.R.Suganthalakshmi[2], wherein, the latter Full Bench held that, challenging the legality and validity of the order of acquittal passed by the trial Court, the complainant can prefer an appeal under Section 378 Cr.P.C. only in the High Court and not under the proviso to Section 372 Cr.P.C. in the Sessions Court. Therefore, the complainant has preferred the instant criminal original petition invoking Section 482 Cr.P.C. seeking the leave of this Court to prefer an appeal based on the order of acquittal passed by the trial Court.

6 Heard Ms. Shase, 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 In this case, even in the complaint, the complainant has not averred the date on which the accused had borrowed Rs.9 lakhs from him. It is the specific case of the accused that he has not had any dealing with the complainant and that he had a property deal with one Chandran, a relative of the accused and in that deal, he had handed over some blank promissory notes and cheques, which have been misused by the complainant for initiating the prosecution against the accused. It may be relevant to state here that the accused had replied to the

[1] 2016 (4) CTC 119

[2] 2020 (4) CTC 1

statutory notice and had set out his defence even at the earliest point of time. In the cross-examination, the complainant has admitted that Chandran is his relative. In the cross-examination of the complainant, the accused had marked Ex.D.1, sale deed, which was executed jointly in the name of the complainant, accused, Chandran and two others and each had contributed Rs.11.50 lakhs for the purchase of the property. In the cross-examination, the complainant has stated that he had lent a sum of Rs.9 lakhs to the accused, not on a single day, but, during the period 2009 - 2010 in eight instalments. However, the complainant has stated that the accused had not repaid any amount and that he had not collected any document as security, whereas, all of them had invested Rs.11.50 lakhs each and had purchased a property on 27.10.2010 vide Ex.D.1 (sale deed). It may be apposite to extract the findings of the trial Court in paragraph no.22 as under:

> "22. Thus, from the above facts itself, it is very clear that the accused side could able to demonstrate that the case projected by the complainant is seriously doubtful and had substantiated that the cheque in dispute could not have any legally enforceable debt as alleged by the complainant and it is doubtful. It is a well established proposition of law that the burden of proof upon the accused to rebut the presumption is only upon the preponderance of probability. This Court is of the considered view that the accused had rebutted the presumptions for the above inconsistent stand taken by P.W.1 in his cross. This Court could also able to see from the evidence of D.W.1 that the complainant and the said R. Chandran who had transactions with the accused's wife are relatives, this fact was also admitted by P.W.1 in his cross. It is also seen from Ex.D.6 that there is an agreement between the said R. Chandran and the wife of the accused on 03.05.2007 and Ex.D.5 is the general power granted to K.S. Manoharan on 03.05.2007 itself as to the very same property to which the sale agreement was entered with the said R. Chandran. It is also substantiated by the accused that the said sale agreement was extended vide Ex.D.7 on 2009 and vide D-8 the general power granted to the said K.S. Manoharan was cancelled on 26.11.2010 that is after the execution of the sale deed between the complainant, accused, R. Chandran and 2 others on 27.10.2010 by Ex.D.1. This Court is also of the considered opinion that the defence of the accused is

not a bare denial and the above documents would in corroboration of the other cases allegedly filed by the relatives of the said R. Chandran in Ex.D.10, Ex.D.11, D.12 coupled with the fact that accused had consistently taken a plea from Ex.D.13 dated 05.02.2011 onwards and also in Ex.P.6 that the transaction is only between R. Chandran and the accused's wife and for that alone, Ex.D.6 to D.8 comes into force and the accused had advanced the documents for the purpose of the said loan is probable as per the evidence of D.W.1. The said defence of the accused as probablised on the materials and also on seeing the lacunae in the evidence of P.W.1 so as to doubt the legally enforceable debt in support of the cheque in dispute had left with no option except to conclude that the accused had rebutted the presumptions and the burden had again shifted upon the complainant and the complainant had failed to substantiate his case."

9 In such view of the matter, this Court is of the considered opinion that this is not a fit case in which leave deserves to be granted to the complainant for challenging the order of acquittal.

Resultantly, this criminal original petition stands dismissed. As a sequitur, the criminal appeal is rejected at the SR stage itself.

Sd/-

Assistant Registrar

/true copy/

Sub Asst. Registrar

cad

To:

1 The I Additional District and Sessions Judge
Chennai

2 The Metropolitan Magistrate (FTC-IV)
George Town
Chennai

+1 cc to Mr.M.Guruprasad Advocate sr30227

Crl.O.P. No.13911 of 2020
in
Crl.A.SR.No.23072 of 2020

aa19/10/2020