

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.09.2020
Pronounced on : 25.09.2020

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.O.P.No.13736 of 2020
in Crl.A.SR.No.23747 of 2020
and
Crl.A.SR.No.23747 of 2020

S.Shakthivel ... Petitioner / Appellant /
Complainant

Vs.

Haneefa Vattakkalari ...Respondent / Respondent /
Accused

Prayer in Crl.OP.No.13736 of 2020 : Criminal Original
Petition filed under Section 378(4) of Cr.P.C., praying to grant
special leave to file Criminal Appeal against the order in
S.T.C.No.3638 of 2015, dated 22.06.2020, passed by the learned
Principal District Munsif cum Judicial Magistrate, Gudalur.

Prayer in Crl.A.SR.No.23747 of 2020 : Criminal Appeal filed
under Section 378 of Cr.P.C., praying to set aside the order in
S.T.C.No.3638 of 2015 dated 22.06.2020 passed by the learned
Principal District Munsif cum Judicial Magistrate, Gudalur.

For Petitioner : Mr.Sankar
for Mr.A.Ilayaperumal

ORDER

This case is taken up through video conferencing.

2. This petition has been filed to grant special leave to
file criminal appeal against the order in S.T.C.No.3638 of 2015,
dated 22.06.2020, passed by the learned Principal District
Munsif cum Judicial Magistrate, Gudalur.

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

4. It is the case of the complainant that the accused had

borrowed a sum of Rs.2 lakhs from him and towards repayment of it, the accused gave a cheque to him bearing No.725543 dated 10.08.2015, drawn on State Bank of India [Ext.P1]; the complainant presented the cheque on the very same day and it was returned with an endorsement "Insufficient funds" on 11.08.2015, vide Return Memo [Ext.P2]; the complainant issued a statutory demand notice dated 20.08.2015, requiring the accused to make payment within 15 days [Ext.P3], which was received by the accused on 25.08.2015, vide postal acknowledgement card [Ext.P4]. Since the accused did not not comply with the demand, the complainant initiated a prosecution against the accused in S.T.C.No.3638 of 2015 before the learned Principal District Munsif cum Judicial Magistrate, Gudalur, for offence under Section 138 of the Negotiable Instruments Act, 1881 [for brevity 'the NI Act'].

5. The complainant examined himself as P.W.1 and marked Exts.P1 to P5. The accused examined himself as D.W.1 and also examined one Hamsa as D.W.2. No documents were marked from the side of the accused.

6. After considering the evidence on record and on hearing either side, the trial Court, by order dated 22.06.2020 dismissed the case in S.T.C.No.3638 of 2015, and acquitted the accused, aggrieved by which, the complainant intends to prefer an appeal before this Court and hence, filed this petition seeking leave under Section 378(4) Cr.P.C.,

7. Heard Mr.Shankar, learned counsel for the petitioner, who submitted that when the accused has admitted the issuance of impugned cheque, the presumption under Section 139 of the Act, that the cheque was issued in discharge of debt would operate, and the entire burden shifts on the accused to prove otherwise. He relied on the judgement of the Hon'ble Supreme Court in M.Abbas Haji Vs. T.N.Channakeshava [2019 9 SCC 606].

8. The learned counsel took this Court through the evidence of the accused and submitted that there are contradictions in his deposition, inasmuch as the accused (D.W.1) has stated that he had issued 4 cheques to the complainant, whereas the details of which provided by him were 5 in number viz., 725540, 725541, 725542, 725543 and 725544. The learned counsel also contended that there are prima facie materials to show that there has been mis-appreciation of evidence by the trial Court and hence, leave of this Court to file an appeal, deserves to be granted.

9. This Court gave its anxious consideration to the submissions made by the learned counsel for the petitioner/complainant and also carefully perused the trial Court judgment.

10. The accused who has examined himself as D.W.1, has stated that he possessed a Marshal Jeep bearing Registration No.TN 017844; and that on 21.08.2012, he purchased a Bolero Vehicle bearing Registration No.TN 4B 9745 for a sum of Rs.5,10,000/- from the complainant, for which he exchanged this Marshal Jeep for Rs.2,00,000/- and on the same day, he also paid a cash of Rs.1,10,000/- to him, and for the balance amount of Rs.2,00,000/-, the complainant himself had arranged for the vehicle loan from Mahindra Finance Company, for which the repayment period is 26 instalments, and that on the same day, the complainant had taken four blank cheques viz., 725540, 725541, 725542, 725543 and 725544 (though it is stated as four, but given the cheque numbers of five cheque leaves in his deposition) from him for Rs.3,10,000/-, including the interest amount, and that on completion of 26 instalments, on 24.03.2012 the accused had got the R.C. Book registered in his name. Thereafter, on 15.09.2015, it came to his knowledge that the cheque bearing No.725543 (Ext.P1) that was given as a security by the accused, was rejected and hence, requiring him to pay the balance amount of Rs.2,00,000/-. The evidence of the accused is corroborated by D.W.2.

11. In the cross examination, the complainant admitted that he is doing automobile business in the name and style of M/s.Shakthi Auto Parts, and that he is the Proprietor of the said concern. His business activities involve selling of automobile spare parts, and apart from it, he also deals in buying and selling of old vehicles; and that he is also working as an agent in M/s.Mahindra Finance Corporation.

12. It is trite that grant of leave under Section 378(4) Cr.P.C., is not automatic and that the appellant should prima facie show that the order of acquittal is perverse. In this case, the complainant has not even stated as to when the accused had borrowed the sum of Rs.2 lakhs from him. In the complaint, the complainant has merely stated as follows :

" The complainant submits that the accused Haneefa Vattakalari K.A., S/o.V.K.Kunjalan owed a sum of Rs.2,00,000/- to the complainant and in discharge of the said liability, the accused have issued a cheque for Rs.2,00,000/- bearing No.725543 dated 10/08/2015, drawn on State Bank of India, Gudalur Branch, in favour of the complainant."

Even in the statutory demand notice dated 20.08.2015 [Ext.P3], the date of borrowal has not been stated. Further, even in the chief examination, the complainant has not stated as to when the accused had borrowed the money. However, in the cross examination, the complainant has stated that the accused borrowed the money on 10.08.2015 and on the same day, he gave the impugned cheque, which was presented in the Bank on the very same day. If the accused had Rs.2,00,000/- with him on 10.08.2015, where is the necessity for him to borrow the amount from the complainant. This was one of the ground/reason on which the trial Court has acquitted the accused.

13. That apart, the complainant, in his initial stage of cross examination, deposed that he was not aware of the vehicle that the accused had purchased and also about the transactions that he had made with the Finance Company, but, at a later point of time in the cross examination, he accepted that the R.C. Book of the vehicle was handed over to the accused, based on his request. This weighed in the mind of the learned trial Judge to conclude that the complainant has not come to the Court with clean hands and that the accused has discharged the burden under Section 139 of N.I.Act, by preponderance of probability, as laid down in the judgment of the Hon'ble Supreme Court in Rangapaa Vs. Sri Mohan [AIR 2010 SC 1898 = (2010) 11 SCC 441].

14. In such view of the matter, this Court does not find any serious infirmity in the reasoning of the trial Court. Hence, it is not a fit case to grant leave to file an appeal before this Court. Accordingly, this petition is dismissed and judgement of the learned Principal District Munsif cum Judicial Magistrate, Gudalur, dated 22.06.2020, in S.T.C.No.3638 of 2015, is hereby confirmed. However, liberty is given to the petitioner to work out his remedies, if any, in the appropriate forum. Consequently, Crl.A.SR.No.23747 of 2020 is rejected.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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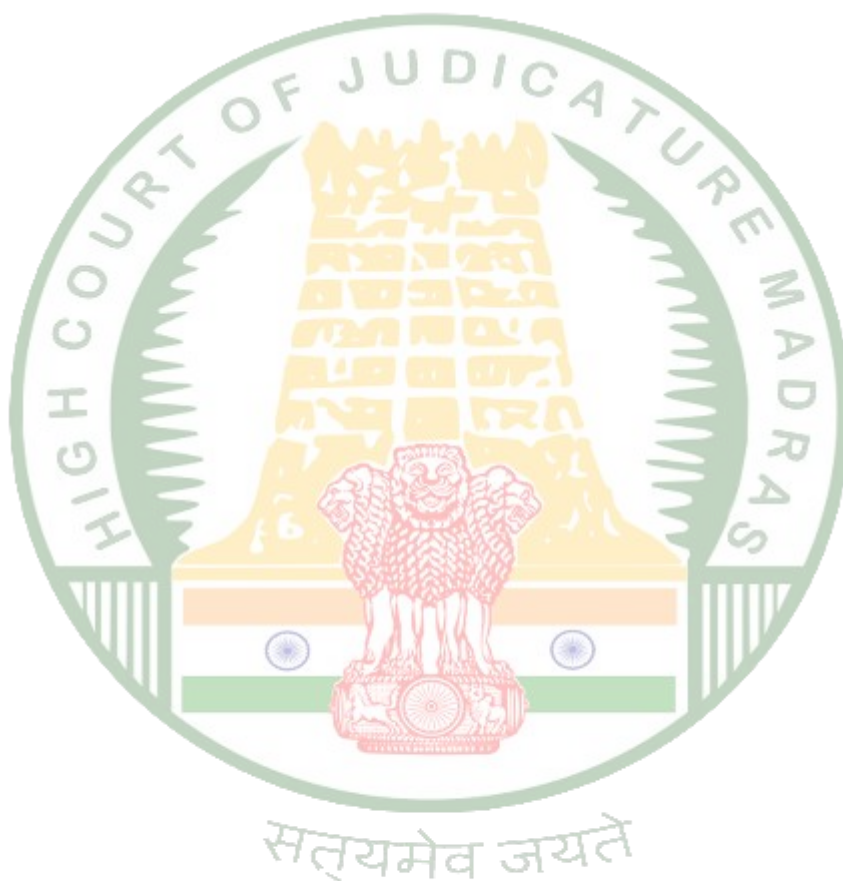
1.The Principal District Munsif cum
Judicial Magistrate
Gudalur.

2.-do - thro The Principal District & Sessions Judge,
Nilgiris.

+lcc to Mr.A.Ilayaperumal, Advocate, sr no.31408

Crl.O.P.No.13736 of 2020
in Crl.A.SR.No.23747 of 2020

RSV(CO)
RMP(21/10/2020)



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