

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.09.2020

PRONOUNCED ON : 23.09.2020

CORAM

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

Crl.O.P.No.14465 of 2020
in Crl.A SR.No.23980 of 2020

Heer A.Rajani
Rep. by her Power of Attorney
Mr.Amit M.Rajani
No.105, New Avadi Road, Kilpauk,
Chennai - 600010. ... Petitioner

.Vs.

M.M.Syed Sikkander
Proprietor : M/s. Syed Bearing Centre
No.16, Begum Sahib 3rd Street,
Mount Road, Chennai - 600002. ... Respondent

Criminal Original Petition filed under Section 378(4)
Cr.P.C. seeking to grant leave to appeal against the judgment
acquitting the respondent/accused in C.C.No.7445 of 2016
31.01.2020 passed by the Metropolitan Magistrate, Fast Track
No.I, Egmore at Allikulam, Chennai - 600003.

For Petitioner : Mr.L.Rajasekar

सत्यमेव जयते
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 on 26.12.2013,
she advanced a sum of Rs.3,00,000/- to the accused and
subsequently, on 23.05.2014, she advanced another sum of
Rs.3,50,000/- to the accused; the accused had agreed to repay
the amounts with interest at 24% per annum and accordingly, the
accused paid some interest and the total outstanding was
Rs.5,45,600/-; towards this debt, the accused issued a cheque
dated 11.04.2016 (Ex.P5); when the complainant presented the

cheque on 18.06.2016, it was returned unpaid with the endorsement 'funds insufficient' by a memo dated 20.06.2016 (Ex.P6); the complainant issued a statutory legal notice on 28.06.2016 (Ex.P7), which was received by the accused on 30.06.2016; since the accused did not comply with the demand, the complainant initiated a prosecution in C.C.No.7445 of 2016 in the Court of the Metropolitan Magistrate, Fast Track Court - I, Egmore, Allikullam, Chennai, under Section 138 of Negotiable Instruments Act, 1881, against the accused. The complainant's husband examined himself as PW-1 and marked Exhibits P1 to P8. The accused examined himself as DW-1 and marked Exhibits D1 to D10.

3. After considering the evidence on record and on hearing either side, the Trial Court vide order dated 31.01.2020 in C.C.No.7445 of 2016, has acquitted the accused, aggrieved by which, the complainant has preferred the present appeal against the acquittal and is seeking leave under Section 378(4) Cr.P.C.

4. Heard Mr.L.Rajasekar, learned counsel for the complainant, who submitted that the Trial Court had failed to take into consideration the promissory note that was executed by the accused and the statement of accounts (Ex.P4) that was submitted by the complainant. He further contended that the Trial Court had placed undue reliance upon Ex.D10, a photocopy of a memorandum of agreement between the accused and one Sivaneswaran, for acquitting the accused.

5. This Court gave its anxious consideration to the submissions made by the learned counsel for the complainant. It is trite that grant of leave under Section 378(4) Cr.P.C., is not automatic and only if it is demonstrated to this Court that the reasonings given by the Trial Court for acquittal, are prima facie perverse, can leave be granted.

6. This Court carefully perused the Trial Court judgment and the evidence of PW-1.

7. It is the case of the accused that a police complaint was given by Sivaneswaran, pursuant to which, he was summoned by the Sub Inspector of Police D-2 Police Station vide Ex.D1 and was forced to enter into an agreement vide Ex.D10, under which the accused had to issue six cheques viz., Cheque Nos.389125, 389126, 389127, 389130, 622906 & 622907; the said Sivaneswaran filed C.C.No.3880/2016 for two cheques viz., 622906 and 622907; Sivaneswaran made one Saravanan file C.C.No.6770/2016 for two cheques viz., 389127 and 389130; Sivaneswaran set up Amit M.Rajani (the husband of the complainant in this case), to file C.C.No.7446/2016 for cheque No.389126; and made the complainant herein, file C.C.No.7445/2016 (the present case) for cheque

No.389125. The Trial Court, in paragraph No.27, has given a finding that all the four cases were filed on the same date viz., 11.08.2016 by four different persons against the same accused and in Ex.D10, the above cheques have been catalogued. It is pertinent to state here that Heera A.Rajani had issued a power of attorney to her husband, Amit M.Rajani, to file C.C.No.7445/2016 and Amit M.Rajani has filed C.C.No.7446/2016 against the accused.

8. The contention of Mr.L.Rajasekar, learned counsel for the petitioner is that the Ex.D10 is a photocopy and therefore, is inadmissible evidence, cannot be countenanced because the original of it is with Sivanewaran, the adverse party. That apart, in paragraph No.28 of the Trial Court judgment, the learned Judge has relied upon the statement of accounts that was marked by the complainant and has taken pains to calculate the principal and interest payable by the accused and after deducting the amounts that were admittedly repaid by the accused, has arrived at a figure of Rs.4,84,840, whereas, the impugned cheque is for Rs.5,45,600/- and hence, arrived at the finding that the cheque was not issued for the debt.

9. This Court is constrained to place on record its appreciation to Mr.Rajesh Raju, the Trial Magistrate, for appreciating the evidence on record from the stand point of a prudent man, as laid down in the definition of the word 'proved' in Section 3 of the Evidence Act, 1872 and for walking the extra mile to calculate the principal and interest based on the accounts submitted by the complainant herself instead of implicitly accepting the statement of accounts as gospel truth. The analysis of the evidence produced by both sides and the narration of facts and law in simple Tamil deserves commendation.

10. In fine, this Court, is of the view that this is not a fit case in which, leave deserves to be granted to the appellant. Accordingly, the Criminal Original Petition is dismissed and consequently, the appeal is rejected at the SR stage itself.

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Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

To

1. The Metropolitan Magistrate,
Fast Track No.I, Egmore,
Allikullam, Chennai - 600003.
2. The Chief Metropolitan Magistrate,
Egmore, Chennai-8

Copy to
The Section Officer,
Criminal Section,
High Court, Madras-104.

+1cc to Mr.L.Rajasekar, Advocate, Sr.No.31242

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