

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2021

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Criminal Original Petition No.20051 of 2020
in Crl.A.Sr.No.35709 of 2020

V.Vijayalakshmi

... Petitioner

...vs...

G.Sivagnanam

... Respondent

Prayer in Crl.OP.No.20051 of 2020 :

Criminal Original Petition filed under Section 378(4) of Cr.P.C to grant special leave to appeal from the judgment of acquittal made in C.C.No.109 of 2016 dated 27.01.2020 on the file of the Judicial Magistrate Fast Track Court No.1 @ ML. Coimbatore (Old C.C.No.381 of 2015 on the file of the Judicial Magistrate No.I, Coimbatore).

Prayer in Crl.A.Sr.No.35709 of 2020 :

Criminal Appeal filed under Section 378 of Cr.P.C preferred against the judgment made in C.C.No.109 of 2016 dated 27.01.2020 on the file of the Judicial Magistrate Fast Track Court No.1 @ ML. Coimbatore (Old C.C.No.381 of 2015 on the file of the Judicial Magistrate No.I, Coimbatore).

For Petitioner : Mr.C.Veera Raghavan

O R D E R

This Criminal Original Petition has been filed against the judgment of acquittal made in C.C.No.109 of 2016 dated 27.01.2020 on the file of the Judicial Magistrate Fast Track Court No.1 @ ML. Coimbatore.

2.According to the petitioner/complainant, she filed a complaint in C.C.No.109 of 2016 before the learned Judicial Magistrate Fast Track Court No.1 @ ML. Coimbatore under Section 138 of Negotiable Instruments Act (herein after referred to as 'NI Act') against the respondent/accused stating that she lent an amount of Rs.5,00,000/- to the accused for his business development during the period from 31.07.2013 to 02.06.2014, for which, the respondent issued a cheque bearing No.937417 dated 28.08.2015. When the cheque was presented for collection on 28.08.2015, the same was returned

for the reason 'Funds Insufficient'. Hence, the petitioner issued a notice on 29.09.2015 to the respondent. The respondent also sent a reply, but, not paid the amount. Therefore, the petitioner filed a complaint in C.C.No.109 of 2016. After due enquiry, the learned Magistrate dismissed the complaint. Since, the accused was acquitted, the petitioner filed the present petition seeking to grant leave to file Appeal.

3. Granting leave to file appeal is not automatic and the petitioner has to show sufficient grounds to file appeal. Therefore, this Court gone through the entire records and inclined to dispose of the petition, as to whether the petitioner has got any ground to file the appeal.

4.1 The learned counsel for the petitioner/complainant would submit that the respondent/accused admitted the signature contained in the cheque. It is further stated that the complainant knew the accused through her sister one Sudha, who was working under the respondent/accused. Hence, the petitioner lent the amount of Rs.5,00,000/-. When, the cheque was presented for collection, the same was returned as 'Funds insufficient'.

4.2 During the trial, the respondent/accused raised his defence before the Court that he has not borrowed any amount as claimed by the petitioner and not issued any cheque in question in favour of the complainant. Further, the sister of the complainant one Sudha was working under the accused, at that time the said Sudha and one Balasubramaniam stolen the cheques of the accused and filed many cases through her relatives and friends including the petitioner herein. Hence, the respondent filed a complaint against Sudha and Balasubramaniam. However, the respondent has not filed any documents to show that he preferred a complaint before the police either for stolen or misplacement of his cheques. Further, the respondent has not explained how the cheque came to the hands of the petitioner. It is further stated that once the issuance of the cheque has been admitted, there is always a presumption in favour of the complainant. However, the learned Magistrate failed to consider the above facts and dismissed the same. Hence, the same warrants interference of this Court.

5. Heard the learned counsel for the petitioner. Despite service of notice on the respondent and his name being printed in the cause list, there is no appearance either in person or through counsel.

6. Admittedly, the petitioner filed a complaint against the respondent/accused under Section 138 of N.I.Act before the learned Judicial Magistrate Fast Track Court No.1 @ ML.

Coimbatore in C.C.No.109 of 2016. During the enquiry, in order to prove the case, the complainant/petitioner herself was examined as P.W.1 and marked Exs.P1 to P5. On the side of the accused/respondent no one is examined as witness.

7. Further, the respondent has taken his defence before the Trial Court that the petitioner did not have sufficient means to lend such a huge amount of Rs.5,00,000/- to the respondent. Further, the petitioner also admitted that she is a housewife and earning income of Rs.5,000/- per month by her tailoring job. Apart from that, the husband of the petitioner also filed another complainant against the accused in C.C.No.108 of 2016 claiming Rs.5,00,000/-.

8. On a perusal of the records, it would reveal that the petitioner has stated that she sold the property in her native place and out of which on 31.07.2013 she lent the amount of Rs.2,00,000/- to the respondent. However, she has not filed any documents to establish the same. The learned Magistrate, after appreciating the entire materials dismissed the complaint.

9.While dealing the appeal, this Court also re-appreciating the entire evidence and found that the respondent has challenged the lending capacity of the petitioner. Further, the husband of the complainant also filed another complaint against the respondent/accused in C.C.No.108 of 2016 claiming Rs.5,00,000/-. It is the duty of the petitioner to prove the lending capacity. Further the issuance of cheque is in dispute. The main grievance of the respondent is that Sudha and Bala Subramaniam were working under him, at that time, they had stolen the cheque and utilising the same, through their relation, namely the petitioner herein and they have filed false case against the respondent.

10.Admittedly, the petitioner has stated that she sold the property in her native place, however, in order to prove the same, she failed to produce any documents. The learned Magistrate after appreciating the entire materials found that the petitioner has not clearly established her case. Further, the petitioner has stated that she lent the amount of Rs.5,00,000/- on various dates to the respondent. On contrary, she deposed that whenever the complainant demanded to repay the amount, the accused used to pay a sum of Rs.5,000/- and Rs.10,000/- as interest. However, the petitioner has not filed any supporting documents for the same and on which date the petitioner lent the money to the respondent. Further, the petitioner's husband also filed another complaint in C.C.No.108 of 2016 claiming Rs.5,00,000/-. It shows that the complainant and her husband lent the amount without receiving the previous amount which is due. No ordinary prudent man will lend the amount without

receiving the previous loan amount. The learned Magistrate found that the petitioner has not proved her case and dismissed the same.

11.It is well settled proposition of law, the presumption under Section 139 of N.I.Act are rebuttable presumption. However, the respondent can always rebut the presumption by preponderance of probabilities and need not disprove the same as in the case of prosecution. In this case, several doubts were raised, even lending capacity of the petitioner. The husband of the petitioner also filed a complaint as if, he has also lent money to the respondent/accused. The petitioner has not proved that she was having lending capacity.

12.Therefore, it is a settled proposition of law that the complainant has to prove his case beyond all reasonable doubts and in the present case, there is a doubt against the petitioner with regard to the lending capacity of money. The petitioner has stated that she sold the property in her native place and out of which she lent the amount, but, she has not produced any documents to prove the same. However, the respondent has disputed the lending capacity of the petitioner. This Court also re-appreciating the evidence and does not find any ground prima facie for filing the appeal.

13. In light of the above facts, this Court is not inclined to grant leave to file appeal. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected Criminal Appeal is rejected at the S.R.Stage itself.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

ms

To

The Judicial Magistrate,
Fast Track Court No.1 @ ML.,
Coimbatore.

+1cc to M/s.C.Veeraraghavan, Advocate SR.1721

CrI.O.P.No.20051 of 2020
in CrI.A.Sr.No.35709 of 2020

SSV(CO)
CB(18/02/2021)