



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 20.10.2021

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THE HONOURABLE MR. JUSTICE **R. PONGIAPPAN**

Cr1.OP(MD)No.15648 of 2021

in

Cr1.A(MD)SR.No.26833 of 2021

P.Muniasamy : Petitioner/Appellant/
Complainant

Vs.

K.Veluchamy : Respondent/Respondent/
Accused

Prayer: Criminal Original Petition filed under section 378(4) of the Criminal Procedure Code, to grant leave to the petitioner to file appeal as against the judgment and order of acquittal passed by the Fast Track Court, Karaikudi, dated 04.12.2019 in CC No.235 of 2018.

For Petitioner : Mr.A.Soundararaj

O R D E R

This petition is filed to grant leave to the petitioner to file an appeal as against the judgment and order of acquittal passed by the Judicial Magistrate (Fast Track Court), Karaikudi, dated 04.12.2019 in C.C No.235 of 2018, acquitting the respondent for the offence under section 138 of Negotiable Instruments Act and section 420 of IPC.

2.Before the trial court, the case of the petitioner/complainant is that on 15.06.2017, the respondent/accused, after availing a loan of Rs.5,00,000/-, executed a promissory note and thereafter, in order to settling the dues, he issued a cheque for Rs.5,00,000/- and when it was presented for collection, the same was returned with the endorsement as "Funds Insufficient." Thus, the respondent/accused is liable to be convicted under section 138 of the Negotiable Instruments Act and section 420 of IPC.



3. After full fledged trial, by judgment, dated 14.12.2019, the learned Judicial Magistrate (Fast Track Court), Karaikudi, has dismissed the said case, by acquitting the accused. Being dissatisfied with the said judgment, the petitioner/complainant intended to prefer an appeal and for which, he preferred this criminal original petition, wherein he pleaded to grant leave for filing appeal against the order of acquittal.

4. Heard Mr.A.Soundraraj, learned counsel appearing for the petitioner and perused the materials available on record.

5. In the judgment rendered by the trial court, the learned Judicial Magistrate observed that there was an evidence that the cheque and promissory note pertaining to the case, which have been obtained by the complainant in the police station and by using the same, the petition mentioned case has been registered against the accused. Though, the said observation may be in favour of the accused, as per the case of the accused, the signature found in the cheque and promissory note belong to him. It is settled law that after admitting the signature in the disputed document, it is for the accused to prove the same, as the same has not been obtained in an usual mood, for discharging the legally enforceable debt. Here, it is a case that after observing that the cheque and promissory note were obtained in the police station without examining any police official as a defence witness, the trial court came to the conclusion that the document, now under dispute was obtained by the de-facto complainant in the police station. Therefore, the said fact, which has been discussed by the trial court needs detailed appraisal. Therefore, the petitioner is entitled to the relief of filing criminal appeal.

6. In view of the above fact, this petition is **allowed** and accordingly, leave is granted.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

The Judicial Magistrate,
Fast Track Court,
Karaikudi.

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+1 CC to M/s.A.SOUNDARARAJ, Advocate (SR-32101[F] dated
21/10/2021)

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RK (27/10/2021) 3P 3C