



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

CRL.O.P.NO.7872 OF 2022
IN CRL.A.SR.NO.29408 OF 2019

M.N.Swaminathan

... Petitioner

Vs.

K.Pari

... Respondent

PRAYER:

Criminal Original Petition has been filed under Section 378 (4) of Cr.P.C., praying to grant leave to enabling the petitioner to file appeal against the acquittal by Judgment dated 08.04.2019, passed by the learned XIX Additional Sessions Judge, City Civil Court, Chennai in Crl.A.No.191 of 2018.

For Petitioner : Mr.R.Vijayaraghaven

For Respondent : Mr.R.Sankarasubbu

O R D E R

This Criminal Original Petition has been filed by the petitioner for granting leave to prefer an appeal as against the judgment dated 08.04.2019 made in Crl.A.No.191 of 2018 on the file of the learned XIX Additional Sessions Judge, City Civil Court, Chennai.

2. The case of the petitioner is that in the year 2015, he filed a complainant under Section 138 of Negotiable Instruments Act, (herein after referred to as "NI Act") as against the respondent, alleging that the respondent is liable to be convicted under Section 138 of NI Act. Later the case was transferred to the Metropolitan Magistrate Court, Fast Track Court-I, Egmore, Chennai and assigned case number as C.C.No.2182 of 2016. Thereafter by the judgment dated 19.03.2018, the learned Metropolitan Magistrate, after completion of trial, found the respondent guilty for the offence punishable under Section 138 of NI Act and sentenced him to undergo simple imprisonment for six months and to pay a sum of Rs.3,000/- as fine.



3. Aggrieved over the same, the respondent in this case viz., Pari filed an appeal before the XIX Additional Sessions Court, Chennai in CrI.A.No.191 of 2018, wherein the learned XIX Additional Sessions Judge, by the judgment dated 08.04.2019, allowed the appeal and acquitted the respondent from the charges. Challenging the said findings the petitioner is intended to file an appeal for which, he filed this present Criminal Original Petition praying to grant leave for filing an appeal.

4. Heard Mr.R.Vijayaraghavan, learned counsel appearing for the petitioner and Mr.R.Sankarasubbu, learned counsel appearing for the respondent.

5. Now on going through the impugned judgment rendered by the first appellate Court, it was clearly held that in the suit filed by the petitioner/complainant in O.S.No.1119 of 2015, the respondent/accused herein paid the entire cheque amount and therefore, it would not be necessary to punish the accused and accordingly he passed an order of acquittal.

6. In this regard, the learned counsel appearing for the petitioner would submit that in respect of issuance of cheque, filing the criminal proceedings under Section 138 of NI Act and also filing of suit are entirely distinct one and both are cannot be clubbed together for considering the issues raised in the respective cases. He would further submit that though the petitioner herein has received the cheque amount in full, he wanted to punish the respondent for the penal act committed by him under the provision of Section 138 of NI Act.

7. Now on considering the above submission with the relevant records, it is true that the petitioner is having an option to file a civil suit as well as the Criminal complaint for recovery of the cheque amount. In this regard, it is rightly observed by the first appellate Court that the entire cheque amount has been paid by the respondent and as of now there is no outstanding due is pending with the respondent.

8. In this regard, the learned counsel appearing for the petitioner also concedes that there was no outstanding due with the respondent. But in respect of the same, the petitioner is wanted to punish the respondent, which is unnecessary. More than that, the entire cheque amount was paid before the year 2017. Accordingly, acquitting the accused is no way prejudice to the right of the petitioner. The entire story stated by the petitioner would go to show that only in order to wreak vengeance, he filed this petition praying to grant leave to prefer an appeal.



9. Considering the number of cases pending in similar nature, this Court is of the opinion that the reasoning given by the petitioner in this petition to leave to file appeal is not satisfactory one and therefore, prima facie, this Court is not convinced that any arguable point in the appeal.

10. In view of the above discussion, this Criminal Original Petition stands dismissed. Consequently, the Criminal Appeal in CrI.A.SR.No.29408 of 2019 is rejected.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rts

To

1. The XIX Additional Sessions Judge,
City Civil Court, Chennai.
2. The Metropolitan Magistrate,
Fast Track Court-I, Egmore, Chennai.

+1cc to Mr.R.Vijayaraghaven, Advocate, S.R.No.28798

CrI.O.P.No.7872 of 2022
in CrI.A.SR.No.29408 of 2019

MT (CO)
PM/16/06/2022