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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.O.P.No.16774 of 2020
in Crl.A.SR.No.28627 of 2020

M.Shankaran

... Petitioner/Complainant

Vs.

R.Kothandan

...Respondent/Accused

PRAYER: Criminal Original Petition has been filed under Section 378(1) of Cr.P.C., praying to leave to file appeal in S.T.C.No.1226 of 2018 on the file of the Judicial Magistrate Court No.1 at Ponneri by its judgment dated 10.02.2020.

For Petitioner : Mr.S.M.Nandhie Devhan

For Respondent : Mr.A.M.Rahamath Ali

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 10.02.2020 made in S.T.C.No.1226 of 2018 on the file of the learned Judicial Magistrate No.1, Ponneri.

2. The case of the petitioner is that he is a complainant in S.T.C.No.1226 of 2018 on the file of the learned Judicial Magistrate No.1, Ponneri. The said complaint has been preferred by the petitioner as against the respondent alleging that the respondent committed the offence punishable under Section 138 of Negotiable Instruments Act (herein after referred to as "NI Act"). The trial Court after elaborate trial and after disbelieving the case of the petitioner, by the judgment dated 10.02.2018, dismissed the complaint and ultimately acquitted the accused. Now the petitioner is intended to challenge the order of acquittal by way of filing this petition.

3. Heard Mr.S.M.Nandhie Devhan, learned counsel appearing for the petitioner and Mr.A.M.Rahamath Ali, learned counsel appearing for the respondent.



4. Now on going through the averments found in the complaint, the petitioner has narrated his case as, in the year 2008, the respondent availed a sum of Rs.50,00,000/- and thereafter in order to discharge the said liability, he issued two cheques each for a sum of Rs.25,00,000/- dated 04.05.2018 and 08.05.2018. Thereafter, due to the reason that the cheques given by the respondent were dishonoured, the petitioner preferred the complaint after complying the statutory formalities found in the NI Act.

5. Now on going through the impugned judgment, the trial Court has categorically held that from the year 2012 onwards, the petitioner and the respondent are not having any relationship and therefore, the question of issuance of cheque in the year 2018 is impossible. Further in the cross-examination the petitioner/complainant has stated that he is a coolly and he earns Rs.500/- per day. Further he has stated that for the past several years he was working as coolly and also his wife is a home maker and not attended any work.

6. Only after relying upon the judgment of the Hon'ble Apex Court held in CrI.A.No.452 of 2004 dated 15.12.2010 in the case of Simon C Abraham Vs. State of Kerala and also the judgment of this Court reported in 2019(2) MLJ (CrI) 327 in the case of Basalingappa Vs. Mudibasappa, the trial Court came to the conclusion that the initial burden of proof has not been discharged by the complainant and therefore the offences under Section 138 of NI Act are attracted.

7. The said observation given by the trial Court is well within the law. In fact, the complainant is having the duty to prove the initial burden as he is a capable man to lend the money of Rs.50,00,000/- at one stretch. Further it is unbelievable in this case that, for the loan given in the year, 2008, he received the cheques in the year 2018. That itself would sufficient to disbelieve the case of the petitioner. Accordingly, 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.

8. In view of the above discussion, this Criminal Original Petition stands dismissed.

Sd/-

Assistant Registrar(CS-VII)

//True copy//

Sub Assistant Registrar



rts

To

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The Judicial Magistrate No.1,
Ponneri

CRL.O.P.No.16774 of 2020
in CrI.A.SR.No.28627 of 2020

RSI (CO)
ASK (21/04/2022)