



Crl.O.P.No.30309 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2022

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.O.P.No.30309 of 2022

in

Crl.A.Sr.36957 of 2022

A.C.Maheshwaran

... Petitioner

Vs.

B. Basha

... Respondent

PRAYER: Criminal Original Petition filed under Section 378(4) of Cr.P.C. to grant Special Leave to file an appeal, against the impugned judgment dated 23.04.2022 in Crl.A.No.2 of 2017 on the file of the learned Principal Sessions Judge, Dharmapuri, confirming the judgment of the learned Judicial Magistrate (FTC), Dharmapuri in STC No.55 of 2015 dated 18.10.2016.

For Petitioner : Mr.S.Subramanian

For Respondent : No appearance



Crl.O.P.No.30309 of 2022

WEB COPY

ORDER

This Criminal Original Petition has been filed against the acquittal order passed by the learned Judicial Magistrate (FTC), Dharmapuri in STC No.55 of 2015, which was confirmed by the learned Principal Sessions Judge, Dharmapuri, in Crl.A.No.2 of 2017, dated 23.04.2022.

2. The learned counsel for the petitioner submitted that the respondent/accused, who is running a agency in the name of BSA Gas Agencies, has acquaintance with the petitioner/complainant. Frequently, the respondent/accused received hand-loans from the petitioner/complainant. In such a way, on 13.03.2015, he got Rs.4 lakhs as hand loan from the petitioner. In order to repay the said amount, the respondent/accused issued a cheque bearing No. 066371, dated 02.04.2015 for a sum of Rs.4 lakhs drawn on IDBI Bank, Dharmapuri. When the petitioner/complainant presented the cheque for collection, it was returned with an endorsement "insufficient funds. Even after receipt of legal notice, the respondent/accused has not paid the amount and hence, the private complaint has been filed. "



CrI.O.P.No.30309 of 2022

WEB COPY

3. Before the Trial Court, the petitioner/complainant examined himself as P.W.1 and marked five documents as Ex.P.1 to Ex.P.5. The respondent/accused examined himself as DW.1. No documents had been marked on the side of the respondent/accused. The Trial Court, without properly appreciating the evidence acquitted the accused. The accused himself admitted his signature in the cheque and his only defence is that he gave three blank cheques in the name of his friend Naveen Babu for security purpose with regard to a chit transaction and he misused the blank cheques and filed the case. Since the accused admitted his signature in the cheque and the petitioner/complainant has also let in evidence for payment of the hand loan, the Trial Court failed to appreciate the evidence in proper perspective, and acquitted the accused, which was also confirmed by the lower Appellate Court, which is contrary to the evidence let in by the petitioner/complainant and against law. Hence, the charge against the accused is proved and the accused has to be convicted and pleaded to grant leave to file the Appeal.

4. I have considered the submissions of the learned counsel for the petitioner and perused the materials available on records carefully.



Crl.O.P.No.30309 of 2022

WEB COPY

5. On perusal of the records, it is seen that the Appellant herein has filed a private complaint against the respondent/accused in STC No.55 of 2015 on the file for the Judicial Magistrate (FTC), Dharmapuri for having committed the offence punishable under Section 138 of N.I.Act. Before the Trial Court, the petitioner/complainant examined himself as P.W.1 and marked 5 documents including the disputed cheque and the accused examined himself as DW.1. The Trial Court, after considering the evidence, observed that the complainant during his cross examination deposed that the accused never came to his house and he also never went to the house of the accused. But, his case is based on the pleading that the petitioner/complainant paid a sum of Rs.4 lakhs to the respondent/ accused in his house. Under these circumstances, the Trial Court has come to the conclusion that the alleged debt of Rs.4 lakhs have not been proved. The lower Appellate Court also after considering the evidence found that the complainant failed to prove the alleged debt, in pursuance of which, the alleged cheque has been given by the accused and thereby, dismissed the appeal by confirming the judgment passed by the Trial Court. On perusal of the evidence on record and materials, I find no prima facie materials in this case either on fact or on law for granting leave to file an Appeal against the order of acquittal. There is no infirmity in the order passed



Crl.O.P.No.30309 of 2022

by the Trial Court as well as the Lower Appellate Court and I find no merit in this Criminal Original Petition. It is not a fit case for granting leave. Hence, this Court is inclined to dismiss this Criminal Original Petition.

6. Accordingly, the Criminal Original Petition is dismissed.

12.12.2022

mrp

To

1. The Principal Sessions Judge,
Principal Sessions Court,
Dharmapuri.
2. The Judicial Magistrate,
Fast Track Court,
Dharmapuri.
3. The Public Prosecutor,
High Court of Madras, Chennai.

5 of 6



WEB COPY



Crl.O.P.No.30309 of 2022

V.SIVAGNANAM, J.,

mrp

Crl.O.P.No.30309 of 2022
in
Crl.A.Sr.36957 of 2022

12.12.2022