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Crl.O.P.No.3286 of 2023 in Crl.A.SR.No.5345 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.O.P.No.3286 of 2023
in Crl.A.SR.No.5345 of 2023

S.Rajendiran,

... Petitioner

-VS-

V.G.Manoharan,

... Respondent

PRAYER: Criminal Original Petition is filed under Section 378(4) of Cr.P.C.,
pleased to grant leave to file appeal as against the acquittal passed by the Hon'ble
Judicial Magistrate, Gudiyatham, in calendar case No.129 of 2017, dated
07.12.2022.

For Petitioner

: Mr.E.K.Kumaresan



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ORDER

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This Criminal Original Petition is filed to grant leave to file appeal against the acquittal order passed by the Learned Judicial Magistrate, Gudiyatham, in C.C.No.129 of 2017, dated 07.12.2022.

2. The Learned Counsel for the petitioner/complainant submitted that the complainant lent a sum of Rs.5,00,000/- on 05.02.2016 and Rs.2,50,000/- on 28.02.2016 to the accused and the accused executed two promissory notes dated 05.02.2016 and 28.02.2016 in favour of the complainant. The complainant agreed to repay the principal with the interest of 36%. Since he has not paid the amount, the accused subsequently issued a cheque bearing No.687801, on 11.12.2016 for a sum of Rs.9,96,000/-, drawn on State Bank of India, Maduranthagam Branch. When it was presented for encashment, it was returned as “Payment stopped by the drawer”. After issuing the legal notice, prosecuted the accused for the offence under Section 138 of N.I. Act.



3. The trial Court, without considering the evidence acquitted the accused on the ground that the alleged pro-note was not produced by the complainant to show that the amount was paid on that date. Further, the accused during the cross examination, denied the receiving amount from the complainant and also alleged that there is a transaction between the brother-in-law of the complainant and the petitioner. In this connection, a civil case is pending in O.S.No.44 of 2017 before the District Court, Vellore. So, it has to be reappraised seeking to grant leave to file an appeal against acquittal.

4. I have considered the submissions made by the Learned Counsel for the petitioner. Records perused.

5. On perusal of the record, the fact reveals that, the petitioner is the complainant in C.C.No.129 of 2017. The respondent is an accused. In the complaint, it is alleged that the accused borrowed a sum of Rs.5,00,000/- on 05.02.2016 and Rs.2,50,000/- on 28.02.2016 and on executing two promissory note, he agreed to repay the amount with the interest of 36%. Since the accused has not paid the amount, he issued a cheque bearing No.687801 dated 13.01.2017



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for a sum of Rs.9, 96,000/- drawn on SBI, Mathurangam Branch. When the cheque presented for encashment, it was returned as “Payment stopped by the drawer”.

After issuing legal notice, filed the complaint against the respondent/accused for the offence under Section 138 of N.I. Act.

6. Before the trial Court, the complainant himself was examined as P.W.1 and also examined two witnesses P.W.2 (Mr.Ragutejha) and P.W.3 (Mr.Parthasarathy) and also marked 8 Exhibits. The defendant examined himself as D.W.1 and also marked 10 Exhibits.

7. The trial court, on considering the evidence, in its judgment at paragraph Nos.15(ii) and (iv) discussed about the failure of the complainant to show his capacity to pay the amount. Specifically, the accused denied receiving of the amount from the complainant and also through the cross examination, probabilised the transaction between the accused and the brother-in-law of the complainant. They both run the financial company in the name of Surabi Investments and Surabi bankers and borrowed a sum of Rs.15,00,000/- and adjusted with Rs.10,00,000/- with the previous debt and gave unsigned cheque to



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the brother-in-law and also obtained the sale deed. The civil suit is also pending before District Court, Vellore, in O.S.No.44 of 2017 and during the cross examination, the complainant failed to give a satisfactory explanation for lending loan to the accused person and also specifically denied in the cross examination, that he has no account in his own name. In the cross examination, admitted that, he did not possess the xerox copy of the alleged promissory note executed by the accused persons.

8. Under these circumstances, the trial Court disbelieved the version of the complaint and the evidence of the complainant and found that, the accused satisfactorily rebutted the presumption in favour of the complainant under Section 139 of N.I. Act and acquitted the accused. Hence, I find no reason and ground to interfere with the acquittal order passed by the trial Court and there is no arguable points either on facts or law, for granting leave to file an appeal against the acquittal order. Hence, this Criminal Original Petition is dismissed.

13.02.2023

Index: Yes/No.
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V.SIVAGNANAM, J.,

bsm

To,
1. The Judicial Magistrate, Gudiyatham.

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