IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.04.2023

CORAM

THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

Crl.O.P.No.2934 of 2023&
Crl.A.SR.No.5537 of 2023

R. Rajaaji .. Petitioner

Vs.

Mrs.D.Vimala .. Respondent

PRAYER: Criminal Original Petition filed under section 378(4) of Cr.P.C., to grant special leave to prefer an appeal against the acquittal of the respondent in its judgment dated 29.11.2022 made in C.C.No.236 of 2019 on the file of the Judicial Magistrate, Fast Track Court, (Magisterial Level), Alandur.

For Petitioner : Mr.V. Chinnasamy

For Respondent : Notice served, none appeared

ORDER

This Criminal Original Petition is filed to grant special leave to prefer an appeal against the acquittal of the respondent made in C.C.No.236 of 2019 by the Judicial Magistrate, Fast Track Court, (Magisterial Level), Alandur, by its judgment dated 29.11.2022.

2. Though notice has been served on the respondent and her name being printed in the cause list, there is no representation for her either in person or through counsel.

3. The learned counsel for the petitioner submitted that the petitioner is the complainant and the respondent is the accused in C.C.No.236 of 2019. The petitioner/complainant lodged a complaint against the respondent/accused for the offence under section 138 of Negotiable Instruments Act for dishonour of cheque. After trial, the trial court dismissed the complaint and acquitted the accused on the ground that the cheque was not supported by any legally enforceable debt and the petitioner had miserably failed to discharge the burden placed upon the respondent to prove that the cheque was issued for a legally enforceable debt and hence the provisions of the Negotiable Instruments Act would not be attracted.

4. The learned counsel for the petitioner further submitted that the respondent has not denied the issuance of cheque and it is presumed that only to

discharge the loan amount, she acknowledged the debt and issued the cheque to the petitioner. Further, the finding of the trial court that the cheque was issued for a time barred debt and the same is barred by limitation and the cheque was drawn for exceeding liability i.e., when the principal amount along with interest at the rate of 24% p.a., is calculated, are not acceptable one. The trial court erred in appreciating the evidence let in by the petitioner. Thus, he seeks to grant leave to file appeal against acquittal.

5. I have considered the arguments of learned counsel for the petitioner and perused the impugned order and other materials placed on record.

6. On perusal of the impugned order, it is noticed that the petitioner is the complainant and the respondent is accused in C.C.No.236 of 2019 on the file of the Fast Track Court, Magisterial Level, Alandur. On perusal of the complaint itself, it is noticed that the petitioner/complainant has alleged in the complaint that the respondent/accused borrowed a sum of Rs.1 lakh on 16.03.2016 from him agreeing to repay the principal amount along with interest at the rate of 24% per annum and also executed a promissory note to that effect. Since that amount was not repaid by the respondent, after three years, i.e., on 06.06.2019, she issued a cheque for Rs.2 lakhs drawn on Central Bank of India, Adayar

Branch in favour of the petitioner. When the same was presented for encashment on 06.06.2019, the cheque was returned with an endorsement 'insufficient funds' on 07.06.2019. After issuing legal notice, the petitioner has filed a private complaint filed before the trial Court. Before the trial Court, the petitioner examined himself as PW1 and also marked 6 documents and on the respondent side, no documents were filed and she did not examine herself or let in any evidence.

7. The trial court, after considering the evidence of the petitioner, dismissed the complaint and acquitted the respondent on the ground that the disputed cheque Ex.P.1 is not signed by the respondent, though it is a joint account of the respondent and her husband. The disputed cheque Ex.P.1 is not signed by the respondent and hence section 138 of Negotiable Instruments Act will not be attracted.

8. Further, admittedly, the alleged loan was given on 16.3.2016 and after a lapse of 3 years, the disputed cheque was issued on 06.06.2019. Therefore the debt is barred by limitation which implies that the cheque was not issued for a legally enforceable debt, hence, section 138 of Negotiable Instrucments will not

be attracted. Further, as per the allegation in the complaint, the respondent agreed to pay the amount of Rs.one lakh with interest at the rate of 24% per annum. Calculating the interest only from the date of borrowal would be arrived at Rs.78,000/-, but, the disputed cheque was issued for Rs.2 lakhs, which is more than the liabiity (i.e., Principal-Rs.1,00,000/- + inerest-Rs.78,000/-). On this ground, the trial court came to the conclusion that the offence under section 138 of Negotiable Instruments Act is not attracted and no offence is made out and acquitted the accused.

9. In view of the foregoing discussions, I find the reasons stated by the trial court in acquitting the respondent is in order. There is no infirmity in the order passed by the trial court. Hence, I find no reason to grant leave to file appeal agianst acquittal. The Criminal Original Petition is dismissed.

10. In view of dismissal of this petition seeking special leave to prefer the appeal, the appeal in Crl.A.SR.5537 of 2023 is rejected at the SR stage itself.

06.04.2023

msr

V. SIVAGNANAM, J.

Msr

To

The Judicial Magistrate, FTC
(Magisterial Level) Alandur.

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