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CrI.O.P.No.3559 of 2023 in CrI.A.SR.No.3437 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2023

CORAM

THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

CrI.O.P.No.3559 of 2023
in
CrI.A.SR.No.3437 of 2023

K. Lakshmi Madhuri

.. Petitioner

Vs

Mr. Nama Venkata Suresh Kumar

... Respondent

Prayer: Criminal Original Petition filed under section 378 (4) of Cr.C.P., to grant Special Leave to prefer the above Criminal Appeal against the acquittal order dated 13.12.2022 passed in C.C.No.113 of 2017 on the file of the Judicial Magistrate (M.L.) Fast Track court, Alandur, Chennai.

For Petitioner : Mr. C. Kaveen

ORDER

This petition is filed by the petitioner to grant special leave to prefer the criminal appeal against the acquittal order dated 13.12.2022 passed in C.C.No.113 of 2017 on the file of the Judicial Magistrate (M.L.) Fast Track Court, Alandur, Chennai.



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2. The learned counsel for the petitioner submitted that the petitioner is the complainant and the respondent is accused in C.C.No.113 of 2017 on the file of Judicial Magistrate (M.L.), Fast Track Court, Alandur. The petitioner purchased a land measuring 7.89 cents through the respondent for a valuable consideration of 70 lakhs and he had paid Rs.5 lakhs as brokerage to the accused. Subsequently, after purchasing the said property, the petitioner came to know that the said land only measures 6.17 cents and there is a shortage of extent. Therefore, on 29.10.2016, he filed a complaint against the accused persons, but at that time, as the respondent requested the petitioner that he is a Government Servant and he need not be prosecuted and he is ready to return Rs.4 lakhs and to that effect, he has also issued two cheques bearing cheque Nos.000001 and 000002 drawn on HDFC Bank, Royachoty Branch for a sum of R.2 lakhs each on 08.12.2016.

3.He further submitted that when the complainant presented the said cheques for encashment, they were returned as 'insufficient funds'. Hence he was prosecuted for the offence under section 138 of Negotiable Instruments Act. The trial court, without properly appreciating the facts in a proper perspective, dismissed the accused, thereby acquitted the petitioner. The evidence has to be re-apprised. Hence, he seeks for granting leave of this



court to file appeal against acquittal.

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4. Heard both sides and perused the records.

5. On a perusal of the facts, it is seen that the respondent, in order to remove his name from the complaint preferred by the petitioner, has issued two cheques for Rs.2,00,000/- each, to repay the amount received from the petitioner towards brokerage commission, pursuant to which, the petitioner has removed his name from the complaint and a complaint was lodged in FIR.No.98 of 2016 before Vayalpad Police Station. From the above fact, it is seen that the said cheques were not issued by the respondent for the purpose of legally enforceable debt. Further, the trial court in its judgment in paragraphs 12 and 13, has observed that the petitioner had issued a statutory notice Ex.P.4 to the accused in which, she had stated that brokerage amount of Rs.4 lakhs had been given to the accused, but in the complaint, it was averred that Rs.5 lakhs has been paid as brokerage commission. So this inconsistency is also affecting the case of the petitioner.

6. It is further observed by the trial court that the alleged disputed two cheques for a sum of Rs.2 lakhs each has been given by the respondent in



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order to get rid off from the complaint preferred by the complainant for the defraud committed by his vendor for shortage of extent in the purchased land. Therefore, the trial court has rightly come to the conclusion that the disputed cheques were not given for the purpose of any legally enforceable debt or liability and it was given for the purpose of relieving him from the police complaint and the petitioner herein had miserably failed to establish the main ingredient of the offence that the cheque was issued for discharging a legally enforceable debt.

7. In view of the foregoing discussions, this court is of the view that the offence under section 138 of Negotiable Instruments Act is not attracted. I find no infirmity in the acquittal order passed by the trial court. There is no ground to interfere with the findings of the trial court. The Criminal Original Petition is devoid of merits and hence the same is dismissed. Consequently, the Criminal Appeal is rejected at the SR stage itself.

15.02.2023

msr



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V. SIVAGNANAM, J.

msr

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