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Crl.O.P.No.27736 of 2022 in Crl.A.SR.No.34100 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.O.P.No.27736 of 2022
in Crl.A.SR.No.34100 of 2022

M/s.Shri Tirupathi Textiles,
Proprietix Mrs.K.Hemalatha.
Rep. by her Power of Attorney Holder,
Mr.G.Kathiresan.

... Petitioner

-VS-

S.Senthil.

... Respondent

PRAYER: Criminal Original Petition is filed under Section 378(4) of Cr.P.C.,
pleaded to grant special leave and permit the petitioner to prosecute the above appeal
filed against the order of acquittal passed in the judgment dated 19.04.2022 made in
S.T.C.No.3605 of 2017 by the Learned Judicial Magistrate No.1, Bhavani.

For Petitioner : Mr.S.Suresh,

For Respondent : Mr.J.Ranjith Kumar,



ORDER

This Criminal Original Petition is filed to grant special leave and to permit the petitioner to prosecute the above appeal filed against the order of acquittal passed by the Learned Judicial Magistrate No.1, Bhavani, in S.T.C.No.3605 of 2017, dated 19.01.2022.

2. The Learned Counsel for the petitioner submitted that the petitioner filed a complaint against the respondent/accused for the offence under Section 138 of N.I. Act. Before the trial Court, the petitioner examined himself as P.W.1 and also marked 10 documents as Ex.P.1 to Ex.P.10.

3. The case of the complainant is that, the accused/respondent had business transaction with the complainant from 11.04.2015 to 04.07.2015 and there was an outstanding of Rs.3,43,610/- and for the said amount, the accused issued a post dated cheque No.126562 drawn on Fedral Bank, Erode, dated 26.01.2017. When the cheque was presented for encashment, it was dishonoured for the reason “Funds Insufficient” on 08.03.2017. Thereafter, a legal notice was issued. Hence, the complainant filed the complaint against the respondent/accused.



4. The trial Court acquitted the accused on the ground that the complainant not proved the business transaction between the accused and also the complainant failed to prove the documentary evidence to show that there is an outstanding amount of Rs.3,43,610/-. The respondent/accused rebutted the presumption in favour of the complainant and the trial Court found the accused not guilty and acquitted the accused. The trial Court failed to consider the fact that the complainant filed Ex.P.4 Ledger account, to show his business transaction and it was disbelieved by the trial Court, without any reason. Therefore, there is a case for reappraising the evidence. Hence, seeks to grant leave to file the appeal.

5. The Learned Counsel for the respondent contended that the trial Court rightly observed and rejected the ledger account copy (Ex.P.4) as it is not a credible one. It is a self attested copy. Further, the complainant failed to prove the bills, delivery memo and 16 bills to show the delivery of goods to the accused. Therefore, the trial Court rightly found that the accused rebutted the presumption in favour of the complainant and offence under Section 138 of N.I Act is not made out. It is further contented that the cheque has been given as security and the complainant failed to prove that there was legally an enforceable debt, on the date of issuing the



cheque. Therefore, there is no ground to interfere with the finding of the trial Court and pleaded to dismiss.

6. I have considered the submissions made by the Learned counsel for the petitioner and the Learned Counsel for the respondent. Records perused.

7. On perusal of the records, the fact reveals that the accused/respondent had business transaction with the complainant from 11.04.2015 to 04.07.2015 and there was an outstanding of Rs.3,43,610/-. For that amount, the accused issued the post dated cheque No.126562, in favour of the complainant drawn on Fedral Bank, Erode, dated 26.01.2017. When the cheque was presented for encashment, it was dishonoured for the reason “Funds Insufficient” on 08.03.2017. Thereafter, a legal notice was issued.

8. Further, on perusal of the judgment of the trial Court in paragraph Nos.9, 10 and 12, the trial Court discussed about the ledger account copy (Ex.P.4) filed by the complainant and in paragraph No.15 discussed about the failure of filing 16 bills which were not produced and in paragraph No.18, discussed about the reply



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notice given by the accused in Ex.P.5 and finally concluded in paragraph No.21, the complainant failed to prove any legally enforceable debt or liability towards the accused. Further, the reliance placed by the complainant on the Ex.P.4 ledger account of the complainant for the period 01.04.2015 to July 2015 was disbelieved on the ground that, it is a self attested account of the complainant. The allegation is that, the 16 bills regarding delivery of goods for the period 01.04.2015 to July 2015 were not produced. Thus, the accused rightly rebutted the presumption in favour of the complainant under Section 139 of N.I. Act. Therefore, in the absence of any evidence, initial burden was not discharged by the complainant and acquitted the accused. Hence, I find no ground to interfere with the finding of the trial Court on facts and law. Therefore, it is not a fit case to grant leave to file an appeal against the order of acquittal. Hence, this Criminal Original Petition is dismissed.

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

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To,
1. The Judicial Magistrate No.1, Bhavani.

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