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CrI.O.P.No.25605 of 2023 in CrI.A.SR.No.54700 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2023

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.O.P.No.25605 of 2023 in
CrI.A.SR.No.54700 of 2023

L.Murali

... Petitioner

Vs.

G.Thara

... Respondent

PRAYER: Criminal Original Petition is filed under Section 378(4) of the Code of Criminal Procedure, to grant special leave to file an appeal against the order of acquittal made in judgment in C.C.No.109 of 2020, dated 26.06.2023 [on the file of the Fast Track Court (Magistrate Level) Alandur].

For Petitioner : Mr.A.Manimaran

ORDER

This petition has been filed seeking to grant special leave to the petitioner to file the above Criminal Appeal.

2.The petitioner as complainant has filed a private complaint under Section 138 of the Negotiable Instruments Act, 1881, against the respondent in C.C.No.109 of 2020. The trial Court, by judgment, dated 26.06.2023 dismissed the complaint acquitting the respondent, against



which, the present appeal.

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3.The contention of the petitioner is that the petitioner paid on 13 occasions on various dates for a sum of Rs.33,70,775/- for purchase of respondent's house at Bangalore. The further case of the petitioner is that the petitioner was employed as Deputy Manager in Hatsun Milk Produces and the respondent was employed as Personal Secretary to the Deputy General Manager in Hatsun Milk Products. At that time, the respondent offered to sell her Bangalore house to the petitioner. Admittedly, in this case, the last cheque was given on 30.03.2012 which is admitted in the evidence by the petitioner which is the case of the petitioner right from the beginning while issuing statutory complaint as well as in his evidence.

4.In this case, three cheques, which are said to have been given by the respondent is dated 08.05.2015, 10.05.2015 and 11.05.2015. Admittedly, all the three cheques are beyond the period of limitation of three years, which point was considered by the trial Court and held in favour of the respondent. Further, though the petitioner had stated that



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on 13 occasions he paid huge sums of money, he has not brought any iota of evidence to show how much money was transferred and whether he had source for the same. Further, though it was projected by the petitioner/complainant that he intended to buy a property at Bangalore but not entered into any sale agreement, he is not in possession of any documents to show that there was an understanding of sale. These facts gone in detail by the trial Court and the trial Court thereafter dismissed the complaint.

5.The petitioner/complainant though claims that he paid huge amount of Rs.33,70,775/- in part on various dates and also claims that some amount paid through bank transaction, but failed to produce any proof of the same when the respondent specifically denied this fact, as could be seen from the reply notice/Ex.P4. The admitted case of the petitioner is that the impugned cheques were issued after the period of three years from the date of payment of amount. It is a time barred debt. The respondent was able to probablize his defence by way of cross examination. The trial Court in its judgment following the judgment of the Hon'ble Apex Court in the case of "***Rangappa Versus Srimohan***



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reported in **(2010) 11 SCC 441**” wherein it had held that the standard of proof required by the accused in rebutting the presumption under Section 139 of the Negotiable Instruments Act, 1881 is by preponderance of probability. Further, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. Following this principle and also finding that the petitioner/complainant unable to produce iota of evidence or any material to show that the amount of Rs.33,70,775/- was paid to the respondent on 13 occasions starting from 11.10.2011 to 30.03.2012 and that too for purchase of a house at Bangalore, the trial Court dismissed the complaint. No prudent person would pay such huge amount for purchase of property without any receipt or acknowledgment or agreement for sale. The petitioner unable to give even the basic details of the property for which the said amount is said to have been given.

6.In view of the same, this Court finds that the judgment of the trial Court is a well reasoned one with no perversity. Hence, the contention of the petitioner that under Section 139 of the Negotiable Instruments Act, 1881 the presumption to be always in favour of the complainant is not



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sustainable on the facts and circumstances of the case.

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7.In view of he same, this Court is not inclined to entertain this petition. Accordingly, this Criminal Original Petition stands dismissed. CrI.A.SR.No.54700 of 2023 stands rejected.

27.11.2023

Speaking order/Non-speaking order

Index: Yes/No

Internet: Yes/No

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To

The Judicial Magistrate,
Fast Track Court (Magisterial Level),
Alandur.



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M.NIRMAL KUMAR, J.

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