



Crl.O.P.No.3494 of 2023
in Crl.A.Sr.No.49429 of 2022

V.SIVAGNANAM, J

This petition is filed seeking to grant leave to file an appeal against the judgment dated 27.06.2022 passed by the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Alandur in C.C.No.21 of 2018.

2.The learned counsel for the petitioner submitted that the petitioner is the complainant and the respondent is an accused in C.C.No.21 of 2018 on the file of the learned Judicial Magistrate, Fast Track Court(Magisterial Level), Alandur, Chennai. The petitioner filed a complaint against the accused for dishonour of cheques, bearing Nos.157501, 157502 and 157503 dated 15.09.2017, 15.08.2017 and 30.09.2017 for a sum of Rs.1,00,000/-, Rs.1,00,000/- and Rs.50,000/- respectively. The cheques have been returned with an endorsement “insufficient funds”. Hence, he issued a legal notice to the respondent on 28.11.2017, in spite of which, the amount has not been paid. Hence, the complaint has been filed.

3.Before the trial Court, the petitioner examined himself as P.W1



and marked 11 documents as Exs.P1 to P11. On the side of the respondent/accused, three witnesses were examined as D.W1 to D.W3 and two documents were marked as D.1 and D2.

4. Upon considering the evidence and documents, the trial Court, in paragraph 15 of the judgment, observed as follows:-

“15. Now the accused had discharged his burden of proving that the cheques in dispute were not issued for any existing debt or liability and the burden shifts on the complainant to prove that there exists an oral agreement between him and the accused for an amount of Rs.2,50,000 to be paid by the accused in respect of the same agreement. But, as discussed above, when there exists a written agreement between the parties, the oral statement adding to the terms of the contract cannot be admitted under law. Hence, this court is of the view that the complainant had failed to prove the existence of any enforceable debt or liability and the cheques in dispute has been issued for the same.

5.The learned counsel for the petitioner further submitted that the



disputed cheques were issued on 15.09.2017, 15.08.2017 and 30.09.2017, which are the separate transactions in connection with the selling of machinery. The trial Court overlooked the evidence and it has to be re-apprised by this Court. Hence, he seeks leave to file an appeal.

6.The learned counsel for the respondent supported the judgment of the trial Court and further cited the paragraphs 14 and 15 of the impugned judgement, in which, the trial Court discussed about the written agreement and has not accepted the contention of the petitioner that there was a separate oral agreement between the parties with regard to payment of Rs.3,50,000/- and subsequently, it was reduced to Rs.2,50,000/-. For that purpose, the disputed cheques have been given. Under these circumstances, there is no reason to interfere with the findings of the trial Court. The acquittal is based upon the reasonable grounds. Therefore, there is no merit to grant leave to file an appeal and hence, he pleads to dismiss the petition.

7.Heard the learned counsel for the petitioner and the learned



counsel for the respondent and perused the materials available on record.

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8. On a perusal of the records and the impugned judgement, the fact reveals that the petitioner is the complainant and the respondent is the accused in C.C.No.21 of 2018 on the file of the learned Judicial Magistrate, Fast Track Court (Magisterial Level) Alandur, Chennai. The petitioner/Complainant filed a complaint under Section 138 of the Negotiable Instruments Act for dishonour of cheques for a sum of Rs.2,50,000/-. After considering the evidence, the trial Court observed in paragraph 15 of the impugned judgement that now the accused had discharged his burden of proving that the cheques in dispute were not issued for any existing debt or liability and the burden shifts on the complainant to prove that there exists an oral agreement between him and the accused for an amount of Rs.2,50,000/- to be paid by the accused in respect of the same agreement. But, as discussed above, when there exists a written agreement between the parties, the oral statement adding to the terms of the contract cannot be admitted under law. Hence, this court is of the view that the complainant had failed to prove the



existence of any enforceable debt or liability and the cheques in dispute has been issued for the same. Proviso 2 to Section 92 of the Indian Evidence Act permits the existence of any separate oral agreement as to any matter on which a document is silent. In this case, the written agreement is silent about the payment of Rs.3,50,000/- and subsequently, it was reduced to Rs.2,50,000/- Therefore, it has to be re-appraised based on the evidence available on record and there is a good case for granting the leave to file an appeal. Hence, leave is granted.

9. Accordingly, this criminal original petition is allowed. Consequently, Crl.M.P. is closed.

10. Registry is directed to number the appeal, if it is otherwise in order and list it in the usual course 'for admission'.

20.06.2023

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