



Crl.O.P.No.24075 of 2023 in Crl.A.SR.No.51900 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2023

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.24075 of 2023 in
Crl.A.SR.No.51900 of 2023

Mahavir Prasad Rathi

... Petitioner

Vs.

R.Elayakumar

... Respondent

Prayer: Criminal Original Petition filed under Section 378(4) of Criminal Procedure Code, to grant special leave to the petitioner to file the above appeal before this Court against the judgment against 16.08.2023 passed in S.T.C.No.656/2019 by the Judicial Magistrate (Fast Track) Court No.I, Erode.

For Petitioner : Mr.M.Karthik

ORDER

The petitioner as a complainant filed a private complaint under Section 138 of the Negotiable Instruments Act, 1881 against the respondent before the learned Judicial Magistrate, Fast Track Court No.I, Erode (Trial Court) in S.T.C.No.656 of 2019. The Trial Court, by judgment, dated 16.08.2023 dismissed the complaint acquitting the respondent, against which, the present leave petition and Criminal Appeal.



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2.The case of the petitioner is that on 07.06.2019, one Sakthivel/PW2 borrowed a sum of Rs.1,00,256/- from the petitioner promising to repay the same with interest at the rate of 18% per annum. In discharge of the said liability, PW2 made an endorsement and discounted two cheques which were issued by the respondent in favour of PW2. These cheques were initially issued by Sakthivel to discharge his liability. There have been a valid endorsement on the backside of the said cheques by the payee in favour of the petitioner who came into lawful possession of the said cheques. Thereafter, the petitioner had become the holder in due course of the above cheques. When the petitioner presented the cheques with the bank, the same was returned for the reason that 'Funds Insufficient'. Following the statutory provisions, the complaint has been filed. During trial, the petitioner examined himself as PW1 and Sakthivel examined as PW2 and marked Exs.P1 to P12. On the side of the defence/respondent, no witness examined and no document marked.

3.The learned counsel for the petitioner submitted that the petitioner purchased the cheques from the said Sakthivel/PW2 for consideration and he



also made necessary endorsement, thereafter, the petitioner had become holder in due course with proper endorsement and entitled for the cheque amount to be collected/recovered from the respondent. He further submitted that Exs.P1 & P2 are the cheques involved in the case which had been returned for 'Funds Insufficient'. The defence taken by the respondent is that he does not know the petitioner, further, he admits that PW2 for supply of Gada Piece cloth, received 15 cheques from the respondent as security. The petitioner had become holder in due course of the said two cheques is not in dispute. But, it is to be seen that whether Section 9 of the Act had been properly followed. In this case, the date on which the petitioner had become holder of the cheques in due course, whether the amount has been received and whether the endorsement has been properly made is a question of fact through the same is not available in the statutory notice, complaint and sworn statement. Thereafter, an explanation given informing that the cheques, dated 09.07.2019 were purchased by the petitioner on 07.06.2019, hence, it is a valid purchase.



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4.From the submissions and on perusal of documents, it is seen that the petitioner/PW1 in his evidence admits that he is not aware about the transaction between PW2 and the respondent and what was the liability of the respondent, whether it is clear from any doubt, nothing is known to petitioner. When the third condition is that the holder in due course should have no sufficient cause to believe that any defect existed in the title of the person from whom he was derived this title. Further, the endorsee becomes a holder in due course for consideration and he can become an endorsee before the amount mentioned in the promissory notice became payable. In this case, there is no evidence in the endorsement or in any of the documents expect for the oral explanation at a later point of time.

5.The learned counsel explanation that the endorsement seal available in Exs.P1 & P2, affixed by Sakthivel/PW2. This is highly improbable, deface normal conduct. When the specific defence of the respondent is that the blank cheques were given during the business between the respondent and Sakthivel, in such circumstances the petitioner ought to have got



clarified and confirmed that there is no doubt in the title. Further, PW1 admission is that he is in the textile business and not in the money lending business. The said Sakthivel who examined as PW2 states about the receipt of the cheques from the respondent and he made endorsement in favour of the petitioner. PW2 further submits that he is only acting as a commission agent and the goods supplied to the respondent is not that of him. The Trial Court considering all these aspects and finding that Section 9 of the Act not followed and complied with, dismissed the complaint.

6.This Court on the evidence and materials and also the submissions, finds that there is no reason to interfere with the judgment of the trial Court.

7.In the result, this Criminal Original Petition stands dismissed and Crl.A.SR.No.51900 of 2023 is rejected.

28.11.2023

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No

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M.NIRMAL KUMAR, J.

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To

The Judicial Magistrate (Fast Track) Court No.I,
Erode.

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