THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2023

CORAM:

THE HONOURABLE MR. JUSTICE **V.SIVAGNANAM**

Crl.O.P.No.32308 of 2022 in
Crl.A.SR 62870 of 2022

T. Raja ... Petitioner

Vs.

T.K.Tamilselvan ... Respondent

PRAYER in Crl.O.P.No.32308 of 2022: Criminal Original Petition filed under Section 378(4) of Cr.P.C. to grant special leave to prosecute the Appeal against the order of acquittal dated 14.11.2022 passed in STC No.275 of 2019 by the Judicial Magistrate, Fast Track Court No.2, Erode.

PRAYER in Crl.A.SR.62870 of 2022: Criminal Appeal (SR) filed under Section 378 of Cr.P.C. to call for the records relating to order dated 14.11.2022 passed in STC No.275 of 2019 by the Judicial Magistrate, Fast Track Court No.2, Erode and set aside the same, by allowing the Criminal Appeal.

For Petitioner/Appellant : Mr. N.Manoharan

ORDER

This Criminal Original Petition has been filed to grant leave to the petitioner to prefer Criminal Appeal against the judgment of Acquittal dated 14.11.2022 passed in STC No.275 of 2019 by the learned Judicial Magistrate, Fast Track Court No.2, Erode.

2. The petitioner herein is the complainant in STC No.275 of 2019 and he filed the above private complaint against the respondent for the offence punishable under Section 138 of Negotiable Instruments Act before the Trial Court. It is the case of the petitioner that the petitioner is doing the business of manufacturing cotton grey and the respondent had purchased the cotton grey in bulk, periodically and after purchase, he used to issue cheques towards the payment of purchased goods. Accordingly, during the course of business, the respondent issued 4 cheques bearing Nos.217718 dated 23.05.2007 for Rs.1,07,00/-; 217719 dated 24.05.2007 for Rs.1,13,000/-; 217720 dated 01.06.2007 for Rs.1,17,000/- ; and 217722 dated 06.06.2007 for Rs.90,000/- drawn on Indusind Bank Ltd., Erode Branch. Subsequently, the above cheques were presented for collection through the petitioner's bank namely

Union Bank of India, Erode Branch on 24.10.2007, and the same were returned on 25.10.2007, with an endorsement " Account closed". Therefore, after issuing statutory notice to the respondent for payment of dishonored cheques amounts, the petitioner filed the complaint.

3. Before Trial Court, on the side of complainant, the complainant examined himself as PW1 and marked 23 documents as Ex.P1 to Ex.P23. On the side of defence, no oral and documentary evidence was adduced.

4. The Trial Court, upon perusing the oral and documentary evidence, passed judgment on 14.11.2022, acquitting the respondent from the offence under Section 138 of Negotiable Instruments Act. Hence this petition has been filed by the petitioner, seeking leave to prefer appeal against the judgment of acquittal.

5. The learned counsel for the petitioner submitted that, the respondent has admitted his signature found in the cheques Ex.P1 to Ex.P4 issued by him and hence, it is for him to rebut the legal presumption beyond all reasonable

doubt that there is no legal enforceable debt, to be paid by the respondent. He further submitted that, without considering the evidence adduced by the petitioner in proper perspective, the Trial Court acquitted the respondent/accused from the offence under Section 138 of Negotiable Instruments Act, on the ground that the petitioner has failed to let any evidence to prove the factum of selling cotton grey to the respondent. Hence, leave may be granted to prefer an Appeal.

6. Heard the learned counsel for the petitioner and I have perused the materials on record.

7. A perusal of the records reveals that the petitioner filed a private complaint against the respondent under Section 138 of Negotiable Instruments Act, stating that he is doing the business of manufacturing cotton grey and the respondent had business transaction with the petitioner and he used to give cheques for payment towards the goods purchased. It is the case of the petitioner that, the respondent issued 4 cheques viz., bearing Nos. i) 217718 dated 23.05.2007 for Rs.1,07,00/-; ii) 217719 dated 24.05.2007 for

Rs.1,13,000/-; iii) 217720 dated 01.06.2007 for Rs.1,17,000/- ; and iv) 217722 dated 06.06.2007 for Rs.90,000/- drawn on Indusind Bank Ltd., Erode Branch towards payment of purchased cotton grey. Subsequently, the petitioner presented the above cheques for collection through his bank namely Union Bank of India, Erode Branch on 24.10.2007, and the same were returned on 25.10.2007, with an endorsement " Account closed". Therefore, after issuing statutory notice to the respondent for payment of dishonored cheques amounts, the petitioner filed the private complaint.

8. It is seen from the records that, the petitioner marked the dishonored cheques as Ex.P1 and Ex.P4 and also marked the returned bank memo as Ex.P5 to Ex.P8. The Trial Court discussed in its judgment that, though the petitioner stated in his complaint that the respondent had issued the cheques, as detailed above, for payment towards the purchase of cotton grey, he has not stated any detail as to the date of purchase, invoice bill, delivery challan, ledger book for sale, size and meter of purchased cotton grey.

9. The records further reveals that, the respondent has raised the defence before the Trial Court that, neither he purchased cotton grey from the petitioner nor issued any cheques, as detailed above, towards payment of purchsed goods. According to the respondent/accused, he gave the above cheques towards security, while he was acting as broker for the petitioner's company and since there was a dispute arose between them with regard to the commission, the present complaint has been filed by the petitioner.

10. In such circumstances, it is to be noted that, the petitioner has not adduced any documents to prove that, there exists business transaction between the petitioner and the respondent; and the respondent purchased cotton grey periodically; and to discharge amount, he issued the alleged cheques. In the absence of any invoice or bills for purchasing cotton grey by the respondent, the petitioner cannot claim that there is legally enforceable debt to be paid by the respondent and to discharge the debt, he issued the cheques, as detailed above.

11. It reveals from the records that the respondent denied the legal presumption under Section 139 of Negotiable Instruments Act through cross of PW1 as well as bringing on record the attending circumstances. Therefore, the burden is vested on the petitioner to prove that the alleged the cheques were given by the respondent to the petitioner towards payment of purchased cotton grey. Since the petitioner has not proved the alleged purchase, by producing invoice bills, delivery challan, purchase order, etc., the Trial Court concluded that the complainant has not discharged the initial burden of proof and has rightly dismissed the case. Hence, this Court do not find any illegality of infirmity on the judgment passed by the Trial Court. Accordingly, this Court find that there is no prima facie case either on facts or on law to grant leave to the petitioners to prefer an appeal against the impugned judgment passed by the Trial Court.

12. Accordingly, the petition to grant leave to prefer the Criminal Appeal is dismissed. Consequently, the Criminal Appeal is also rejected at the SR stage itself.

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To:

The Judicial Magistrate, Fast Track Court No.II, Erode.

V.SIVAGNANAM, J.

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Crl.O.P. No.32308 of 2022

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