



Crl.O.P.No.3015 of 2023 in Crl.A.SR 63650 of 2022

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2023

CORAM:

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

Crl.O.P. No.3015 of 2023 in
Crl.A.SR 63650 of 2022

G.Raju ... Petitioner

Vs.

P.Narayanan ... Respondent

PRAYER: Criminal Original Petition filed under Section 378(4) of Cr.P.C. to grant leave to file the appeal against impugned judgment passed by the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Alandur, in C.C.No.313 of 2017 dated 31.10.2022.

For Petitioner : Mr.T.Naveen Chandar

ORDER

This petition has been filed to grant leave to the petitioner to prefer Criminal Appeal against the the judgment passed in C.C.No.313 of 2017 dated 31.10.2022 by the Judicial Magistrate, Fast Track Court (Magisterial Level), Alandur.

2. The petitioner herein is the complainant and the respondent herein is



the accused in C.C.No.313 of 2017 before the Trial Court. The petitioner filed the above complaint against the respondent under Section 138 of Negotiable Instruments Act stating that, on the promise of facilitating the petitioner to get a Government Contract for supplying solar panel to the Co-operative Department, the respondent/accused demanded a sum of Rs.10,00,000/- from the petitioner for making arrangements at initial level expenditure. Believing the words, the petitioner paid a sum of Rs.10,00,000/- to the respondent on various dates, but the respondent never arranged the contract. Hence, after repeated demands, the respondent/accused issued a cheque bearing No.179699 dated 30.06.2017, drawn on IDBI Bank, Tuticorin Branch for repayment of the above said amount. But, when the petitioner presented the cheque for collection, the same was returned by his banker, viz., TNSC Bank, Adambakkam on 14.08.2017 for the reason of " Funds insufficient". Therefore, after issuing legal notice to the respondent, the petitioner filed the complaint.

3. Before Trial Court, the petitioner examined him as PW1 and marked



3 documents as Ex.P1 to Ex.P3 and the respondent examined himself as DW1 and marked 2 documents as Ex.R1 and Ex.R2. After perusing the oral and documentary evidence, the Trial Court, dismissed the complaint and acquitted the respondent/accused from the charge under Section 138 of Negotiable Instruments Act. Challenging the above judgment of acquittal, the petitioner filed the present Petition seeking to grant leave to file the Criminal Appeal.

4. The learned counsel for the petitioner submitted that the petitioner had given a sum of Rs.10,00,000/- to the respondent to facilitate the petitioner to get the Contract for supplying Solar Panel and hence, the complaint is maintainable. He further submitted that, since the contract being not permitted in statue, it was dismissed and the petitioner during his cross examination explained that the amount was not given as bribe. It is contended by the counsel for the petitioner that the petitioner had established the ingredients of Section 138 of Negotiable Instruments Act and hence, he is entitled to legal presumptions under Section 139 of Negotiable Instruments Act. However, without appreciating the facts and the evidence in proper perspective, the



Trial Court has erred in dismissing the complaint. Hence, he seeks to grant leave.

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

6. The contention of the petitioner/ complainant in his complainant as well as during his evidence before the Trial Court is that, he paid a sum of Rs.10,00,000/- on various dates to the respondent, only for the purpose of procuring government contract to supply Solar Panel to the Cooperative Department, by utilizing his influence. Under these circumstances, the payment of any amount for procuring Government Contract, cannot be termed as legally enforceable debt or liability. Any condition consideration given for contract, may be recollected. But, only for the purpose of procuring the contract, the alleged amount had been given by the petitioner to the respondent.

7. At this juncture, it is to be noted that the Trial Court, in its



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judgement, relied upon a decision of the ***Delhi High Court in Virender Singh***

Vs. Laxmi Nrain, reported in 2006 SCC on line Del.1328 and observed as

"if the consideration or object of an agreement is unlawful, illegal or against the public policy, the agreement itself is void and legally unenforceable, as a result of which, any cheque issued in discharge of liability under a void agreement, cannot be said to be issued in discharge of a legally enforceable debt or liability" and has rightly dismissed complaint and released the accused. Therefore, this Court is of the view that the above finding of the Trial Court is legally sustainable and there is no reason to interfere with that acquittal order. As such, there is no prima facie case, to allow the petition and the same is liable to be dismissed, as it has no merits.

8. Accordingly, this Criminal Original Petition is dismissed.

Consequently, the Criminal Appeal is also rejected at the SR stage itself.

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Index: Yes/No
Internet: Yes/No
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1. The Judicial Magistrate,
Fast Track Court (Magisterial Level),
Alandur,



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V.SIVAGNANAM, J.

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