IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2024

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

Crl.O.P.No.7339 of 2024
in Crl.A.SR.No.12784 of 2024

P.Nagaraj ... Petitioner/Appellant

Vs.

N.Selvam ... Respondent/Respondent

Prayer in Crl.O.P.No.7339 of 2024 : Criminal Original Petition filed u/s378(4) of Code of Criminal Procedure, seeking to grant special leave and permit the petitioner to prosecute the above appeal filed against the order of acquittal dated 13.12.2023 made in S.T.C.No.189 of 2018 on the file of the District Munsif cum Judicial Magistrate, Kodumudi.

Prayer in Crl.A.SR.No.12784 of 2024 : Criminal Appeal filed u/s.378 of the Code of Criminal Procedure, seeking to set-aside the trial court order of acquittal dated 13.12.2023 made in S.T.C.No.189 of 2018 on the file of the District Munsif cum Judicial Magistrate, Kodumudi by allowing this Criminal Appeal.

For Petitioner : Mr.T.Balaji

For Respondent : Notice dispensed with

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ORDER

This Criminal Original Petition has been filed seeking to grant special leave to the petitioner to file an appeal against the impugned judgment passed by the learned District Munsif cum Judicial Magistrate, Kodumudi, in S.T.C.No.189 of 2018 dated 13.12.2023.

2. Since no adverse order has been passed against the respondent, notice to the respondent is dispensed with.

3. The case of the petitioner/complainant is that, on 14.01.2018, the accused/respondent borrowed a sum of Rs.5,00,000/- for her urgent expenses from the complainant and in order to discharge the said liability, the accused issued a post dated cheque for a sum of Rs.5,00,000/- bearing No.723887 drawn on Vijaya Bank, Namakkal Branch, dated 15.02.2018 in favour of the complainant. As per the assurance of the accused, the complainant presented the said cheque for collection through his bank on 16.02.2018 and the same has been returned with an endorsement "Account closed" on 16.02.2018. Thereafter, the complainant issued a legal notice to the accused and though the accused received the said notice on 02.03.2018, however, she did not come

forward to pay the cheque amount to the complainant. Therefore, left with no other alternative, the complaint was filed by the complainant as against the accused for an offence u/s 138 and 142 of the Negotiable Instruments Act (in short 'the NI Act') before the trial court in S.T.C.No.189 of 2018. The trial court, appreciating the materials available on record, held that the petitioner has failed to establish that there was a legally enforceable debt for which the cheque was issued, which was dishonoured and also failed to prove that the cheque was issued by the respondent for discharging a legally enforceable debt and, accordingly, acquitted the respondent. Aggrieved by the same, the petitioner has filed the present petition seeking grant of special leave to prefer an appeal to set aside the judgment dated 13.12.2023 passed in S.T.C.No.189 of 2018.

4. The learned counsel appearing for the petitioner submitted that the respondent borrowed a sum of Rs.5,00,000/- from the petitioner on 14.01.2018, for which, she issued a cheque dated 15.02.2018 and after a period of one month, on 16.02.2018, the said cheque presented and the same was dishonoured on the same day. However, before the Trial Court,

the respondent has taken a defence that she borrowed a sum of Rs.50,000/- from one Rathnasamy, who is the owner of MLR Finance in the year 2007 and repaid the said amount along with interest by way of 13 installments in the year 2008. Thereafter, borrowed another sum of Rs.70,000/- and the said amount was also discharged in the year 2008 itself. However, for borrowing the said amount, she issued a blank signed cheques as security to the said Rathnasamy and the said Rathnasamy set up the petitioner to file a private complaint u/s 200 of Cr.P.C. for the alleged offence u/s 138 of N.I. Act and again, it is alleged that the respondent approached the said Rathnasamy, who in turn instructed the respondent to pay Rs.2,00,000/- to the petitioner, thereafter, the petitioner will withdraw the said complaint, thereby the respondent paid a sum of Rs.50,000/- twice on 30.05.2023 and Rs.1,00,000/- on 31.05.2023. Even then, the petitioner not withdraw the said complaint as per the instructions of the said Rathnasamy. On the above defence taken by the respondent, the trial court acquitted the respondent, which is wholly unsustainable. Further, he submitted that the respondent borrowed a sum of Rs.5,00,000/- and after filing of complaint for the alleged offence u/s 138, the respondent paid a sum of Rs.2,00,000/-. Since the petitioner and the respondent known to each other, the respondent is aware of the bank details of the petitioner, thereby he deposited the said amount in the bank account of the petitioner and the same cannot be held against the petitioner subsequently as if there is no legally enforceable debt and dismissed the complaint. Accordingly, he prays for appropriate orders.

5. Heard the learned counsel appearing for the petitioner and also perused the materials available on record.

6. The issue arised in the present case is whether the petitioner has capacity to advance the loan amount of Rs.5,00,000/- in the year 2009 to the respondent.

7. In the cross examination, though the petitioner stated that he is doing brokerage business and also agricultural business, however, no proof has been submitted before the trial to prove that he earned the said loan amount through brokerage business. Further, the petitioner did not disprove that he received a sum of Rs.2,00,000/- subsequent to the complaint through bank transaction. It is the case of the respondent that she did not know the petitioner prior to the complaint and she approached

the said Rathnasamy, owner of MLR Finance and as per his instructions, the respondent deposited a sum of Rs.2,00,000/- to withdraw the complaint. On the said ground, the case ended in acquittal.

8. Further, the petitioner has not produced any document to prove that he has the capacity to advance the said amount to the respondent and on what basis, he received a sum of Rs.2,00,000/- from the respondent subsequent to the complaint filed by him. It is also seen that as per the instructions of the said Rathnasamy, he filed the complaint u/s 138 of N.I. Act as against the respondent, which was elaborately adjudicated by the trial court and same was ended in acquittal, which cannot be interfered with.

9. When this Court expressed its opinion that this Court cannot interfere with the impugned order passed by the trial court, the learned counsel restricted his prayer and sought liberty of this Court to permit the petitioner to approach the Civil Court for recovery of money by producing the promissory notes, if any and impugned cheques and further prayed that the period during the pendency of S.T.C.No.189 of 2018 before the Court below and the Criminal Original Petition before this Court may be

excluded for the purpose of limitation.

10. In view of the above limited request sought for by the learned counsel appearing for the petitioner, this Criminal Original Petition is dismissed. The period during the pendency of S.T.C.No.189 of 2018 before the Court below and the Criminal Original Petition before this Court for the purpose of limitation, would be available and workout the remedy if the petitioner is otherwise entitled to in accordance with law. Consequently, the Criminal Appeal is rejected at the SR stage itself.

16.04.2024

Index : Yes / No
Speaking order / Non-speaking order
NCC : Yes / No
sp

To

1.The District Munsif cum Judicial Magistrate, Kodumudi.

M.DHANDAPANI, J.

sp

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