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Crl.O.P.No.6124 of 2024
in Crl.A.SR.No.13510 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2023

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.6124 of 2024
in
Crl.A.SR.No.13510 of 2024

S.Paneer Selvam

... Petitioner

Vs.

K.Nallapan

... Respondent

PRAYER: Criminal Original Petition has been filed under Sections 378(4) of Cr.P.C, praying to grant leave to file the appeal against the impugned judgment of acquittal dated 09.01.2024 passed in S.T.C.No.268 of 2022 by the learned Judicial Magistrate, Fast Track Court-I, Erode District.

For Petitioner

: Mr.M.Palanivel

ORDER

This petition is filed seeking to grant leave to file an appeal against the acquittal of the respondent.



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2.The petitioner as complainant had filed a private complaint against the respondent under Section 138 of the Negotiable Instruments Act in S.T.C.No.268 of 2022. The trial Court, by judgment dated 09.01.2024, dismissed the complaint, against which, the present leave petition and appeal.

3.The contention of the learned counsel for petitioner is that the trial Court merely gone on the evidence of DW1 and DW2 and Exs.D1 and D2/ compromise memo and judgment in O.S.No.191 of 2021 dated 19.10.2022. The learned counsel submitted that a compromise is entered between the petitioner and wife of the respondent and not with the respondent. That is the separate transaction for a purchase of property for which, Rs.2,00,000/- has been given as advance and after negotiation it was settled for Rs.5,00,000/-. As far as this respondent is concerned, he received Rs.7,00,000/- for urgent family expenses and business purpose on 11.07.2021, for which, he issued a cheque. The cheque was presented on 17.08.2021, got dishonoured thereafter, statutory notice was sent on 05.09.2021. The respondent received notice on



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07.09.2021 but not sent any reply. On the other hand, for the first time takes a stand that for a transaction between the petitioner and the respondent's wife, the respondent had given a cheque as security along with promissory note and other documents. The cheque now received and complaint lodged, which is not proper. The trial Court failed to consider that the respondent has not probalised his defence, on the other hand merely gone on the civil suit findings.

4.Considering the submission made and on perusal of the evidence of PW1, DW1 and DW2 and Exs.D1 and D2 it is not in dispute that the transaction between the petitioner and Muthulakshmi/wife of respondent was in the year 2020 and at that time the said Muthulakshmi after receipt of advance amount for the property, issued promissory note on 10.12.2020 and thereafter the petitioner had sent a legal notice on 16.12.2020. The said Muthulakshmi sent a evasive reply on 21.12.2020. The evidence of



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DW1/Muthulakshmi and DW2/the respondent herein are clear categorical that the cheque was given as security and they also probalised their defence by producing Exs.D1 and D2. From Ex.D2 it is seen that suit was filed on 10.02.2021 and the cause of action in the civil case arose from 01.09.2019 to 16.12.2020 and 21.12.2020 and thereafter since the issue between the Muthulakshmi and the petitioner got settled, the suit initiated by the petitioner was dismissed. Hence, it is seen that the suit was filed on 10.02.2021 against respondent's wife but the present case projected by the petitioner is that on 11.07.2021, when the suit was pending. Thereafter, the suit also ended in compromise and the said Muthulakshmi paid Rs.5,00,000/- and settled the issue. In such circumstances, the respondent taking a loan from the petitioner on 11.07.2021 might not be possible and hence, from the evidence, it is seen that the defence probalised has been rightly appreciated by the trial Court and dismissed the complaint. In view of the same, this Court is not inclined to entertain this leave petition.



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5. Accordingly, the Criminal Original Petition is dismissed.

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

19.03.2024

Index : Yes/No

Internet : Yes/No

Speaking order/Non speaking order

Neutral citation : Yes/No

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To

The Judicial Magistrate,
Fast Track Court-I, Erode District.



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M.NIRMAL KUMAR, J.

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