IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2024

CORAM:

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

Crl.O.P.No.8411 of 2024
in Crl.A.SR.No.18262 of 2024

N.Kumar ... Petitioner

Vs.

K.Jeyaraj ... Respondent

Prayer: Criminal Original Petition filed under Section 378 (4) of Cr.P.C., to grant special leave to the petitioner to file the above appeal before this Court against the order dated 16.02.2024 passed in S.T.C.No.464 of 2022 on the file of the Judicial Magistrate, Fast Track Court No.I, Erode.

For Petitioner : Mr.J.Titus Enock

ORDER

This petitioner has filed this Original Petition seeking leave to file an appeal against the order of acquittal order dated 16.02.2024 passed in S.T.C.No.464 of 2022 on the file of the Judicial Magistrate, Fast Track Court No.I, Erode.

2. The facts of the case are as follows:

It is the case of the complainant that the respondent has borrowed a sum of Rs.4,00,000/- on 14.03.2021 to meet his urgent expenses. Towards the discharge of the said loan amount, it is the case of the complainant that the respondent issued a cheque dated 15.02.2022 for a sum of Rs.4,00,000/-. Since the respondent did not repay the loan amount even after a period of one year, on 07.03.2022, the complainant presented the cheque before the Bank for encashment of the amount. However, the said cheque was returned on 08.03.2022 with an endorsement "funds insufficient". Hence, the appellant gave a statutory notice to the respondent/accused on 22.03.2022 seeking for repayment of the loan amount. The respondent has received the statutory notice on 24.03.2022 and sent his reply on 05.04.2022. Since no amount was forthcoming, the petitioner has filed a complaint before the learned Judicial Magistrate under Section 138 of NI Act which was taken on file in STC. No.464 of 2022. After fulfledged trial, the learned Judge rejected the case of the complainant by the impugned judgment. Aggrieved by the dismissal of his case, the complainant has filed the present OP seeking leave of this Court to prefer an appeal against the judgment of the learned trial judge.

3. The learned counsel appearing for the petitioner vehemently argued

that the trial Judge ought not to have disbelieved the case of the complainant. The complainant has produced all materials records and his oral evidence is cristal clear as to the borrowing of the loan by the respondent on non repayment of the same. The respondent has given a cheque for a sum of Rs.4,00,000/- dated 15.02.2022. The respondent has agreed that he would repay the entire loan amount of Rs.4,00,000/- within a very short period. However, even after one year, the respondent did not repay either the principle amount or interest thereof. Therefore, the complainant made use of the cheque given by the respondent and presented the same for collection after a period of one year i.e. On 07.03.2022. However, the said cheque was dishonored. Therefore, the complainant has issued Statutory notice, even after receipt of the said notice, the respondent has failed to honour his commitment. Therefore, the complainant was forced to approach the Judicial Magistrate with the present complaint. The learned trial Judge, without appreciating the material facts, has dismissed the case of the complainant. Hence, the learned counsel prays that special leave may be granted to the petitioner to prefer an appeal against the order of the learned trial Judge.

4. Heard the learned counsel for the petitioner and perused the

materials available on record.

5. The trial Judge has passed detailed and well reasoned order. A perusal of the order, it is seen that the present complaint has been given only as counter blast to the police complaint lodged by the respondent. The petitioner alleges that the respondent has taken a loan of Rs.4 lakhs and he has given cheque for a sum of Rs.4 lakhs. Since the respondent is evading the repayment, even after no penny was paid, the complainant made use of the cheque and presented for collection and the same was rejected for the reason funds insufficient. However, the respondent has agreed that the cheque belongs to him and the signature found on the cheque is also that off the respondent. However, it is specific case of the respondent that what he gave for only a blank cheque. The respondent in his evidence has stated that he has taken a loan of Rs.2 lakhs from Sri Devi Amman Finance where the petitioner and one Nagendran were partners. At the time of taking loan of Rs.2 lakhs, the respondent has given a blank cheque duly signed by him. The case of the respondent is that the loan amount of Rs.2 lakhs was paid by his son by money transfer to the account of the petitioner and his partner Nagendran. A sum of Rs.1 lakh has been transferred to each of the account. In this regard, the respondent has examined

the bank manager. The Bank Manager has entered into the witness box as DW1 and he has stated that a sum of Rs.1 lakh was transferred by way of IMPS. A sum of Rs.1 lakh was transferred to the Sri Devi Amman Finance on 26.08.2020 and another sum of Rs.1 lakh was transferred to the account of one Nagendran on 09.07.2020. After the loan was discharged, the petitioner demanded a sum of Rs.84,000/- as interest. Since the loan amount has already been settled, the respondent was not willing to pay any further and he has lodged a police complaint on 06.03.2022 before the Appakoodal Police Station. Before the Police, the parties tried to arrive at an agreement. One Nagendran, partner of the petitioner, has clearly stated that a sum of Rs.2 lakhs was given as loan to the respondent in the year 2018. According to the said Nagendran from 2020, the respondent did not pay any amount. Phone calls made by one Nagendran and the complainant remained unanswered by the respondent. From the said statement, it is clear that one Nagendran was a partner of Sri Devi Amman Finance. Further, in Ex.DW4, it is seen that the respondent side initially agreed to pay a sum of Rs.50,000/- as interest and later he stepped back from the said offer.

6. From the above, it is crystal clear that a police complaint was

lodged against the petitioner for demanding exorbitant interest and the parties even tried to settle the issue. Since the respondent has fully repaid his loan, he was not ready and willing to pay any amount towards interest. Since no amount was forthcoming, the petitioner has utilised the blank cheque given by the respondent and on the very next day, on 07.03.2022, he filled the cheque for a sum of Rs.4 lakhs and presented the same for collection and the same was returned for insufficient funds. Thereafter, the complainant has given a statutory notice, even after the respondent has not paid any amount, he has lodged the complainant before the learned Judicial Magistrate.

7. The learned Judge has clearly noted that the petitioner in his evidence has given contrary statement that he is not a partner of the Sri Devi Amman Finance and the loan amount was given only in his individual capacity. The petitioner has even stated that one Nagendran was not his partner. The said statement runs contra to the statement made by one Nagendran before Police wherein he has clearly stated that he has clearly stated that he was a partner of Sri Devi Amman Finance along with the petitioner and they had given a loan amount of Rs.2 Lakhs to the respondent.

8. Having participated in the police enquiry and also given a statement, the petitioner has indeed given a false statement before the learned trial Judge that he is not a partner of Sri Devi Amman Finance. Likewise the petitioner has complained that the respondent has not paid interest for about seven eight months. In that case, while presenting the cheque, the petitioner would have definitely added the interest portion and submitted the cheque for collection. Therefore, it is crystal clear that the petitioner has given a present complaint only as a counter blast for the complaint lodged by the respondent before the concerned Police. Having failed in his attempt to get an exorbitant interest, the petitioner has filled up as try to make out the case as if the respondent borrowed a sum of Rs.4 lakhs. In the Ex.D4, the partner of the firm one Nagendran, has clearly stated that a sum of Rs.2 lakhs has given to the respondent in the year 2018. The evidence of the Bank Manager was examined as DW1 is very clear that a sum of Rs.1 lakh each was transferred to the account of the petitioner and one Nagendran. Ex.D1 (Series) proves the transfer of money to the account of the petitioner and Nagendran and therefore, the order passed by the learned Judicial Magistrate is cogent and convincing and the same does not warrant any interference by this Court.

9. For the reasons afore stated, the Criminal Original Petition is dismissed. Consequently, the special leave petition is also rejected at the SR stage itself.

04.04.2024

Index:Yes/No
Speaking/Non speaking order
rli

To

Judicial Magistrate, Fast Track Court No.I, Erode.

M.DHANDAPANI . J,

rli

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