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Crl.O.P.No.13971 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2024

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

Crl.O.P.No.13971 of 2023
in Crl.A.SR.No.27683 of 2023

T.O.Vasudevan

... Petitioner

Vs.

M.Devendhiran

... Respondent

Prayer in Crl.O.P.No.13971 of 2023 : Criminal Original Petition filed u/s.378(5) of the Code of Criminal Procedure, seeking to grant leave to the petitioner to file the above appeal filed against the Judgment dated 11.04.2023 passed in C.C.No.742 of 2017 on the file of the learned Judicial Magistrate, Fast Track Court at Magisterial Level – II, Coimbatore, acquitting the respondent herein.

Prayer in Crl.A.SR.No.27683 of 2023 : Criminal Appeal filed under Section 378(4) of the Code of Criminal Procedure Code, to allow the criminal appeal by setting aside the Judgment dated 11.04.2023 passed in C.C.No.742 of 2017 on the file of the Judicial Magistrate, Fast Track Court at Magisterial Level-II, Coimbatore.

For Petitioner : Mr.K.Govi Ganesan

For Respondent : Not Ready in Notice

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



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by the learned Judicial Magistrate Fast Track Court at Magisterial Level – II,
Coimbatore in C.C.No.742 of 2017 dated 11.04.2023.

2. The case of the petitioner/complainant is that, the accused/respondent is doing the M/s.SV & Co., Real Estate and building construction. On 10.11.2015, the accused had approached the complainant to supply the building materials at his home and the accused has borrowed a sum of Rs.15,00,000/- for supplying building construction materials. Further, the accused assured to supply the said materials at the same month. But the accused did not supply the said materials within the time. Therefore, on 08.10.2015, the complainant asked the accused to supply the building materials as assured by him or to repay the amount. On the same day, the accused assured to pay the amount within two months and also he issued a post dated cheque dated 08.10.2015 cheque bearing No.221997 for a sum of Rs.15,00,000/- drawn on Axis Bank, Coimbatore. As per the assurance, when the said cheque was presented for collection through Indian Bank, Saravanampatti Branch, Coimbatore, the same was returned as dishonoured with a return memo dated 09.12.2015 by the said Bank stating the reason as "Account Closed". Hence, the complainant issued a legal notice to the accused on 14.12.2015 and the same was returned with an endorsement "Not



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Claimed" by the accused on 23.12.2015. The main contention of the complainant is that, till date, the accused has neither made payment nor gave any response. Therefore, the petitioner made a complaint u/s 138 of N.I.Act and the same was dismissed vide impugned order dated 11.04.2023. Challenging the same, the petitioner has preferred the present petition seeking to grant special leave to prefer an appeal against the said judgment dated 11.04.2023 in C.C.No.742 of 2017.

3. The learned counsel appearing for the petitioner submitted that the petitioner has filed the complaint u/s 138 of N.I. Act as against the respondent on 29.12.2015, since the cheque issued by the respondent dishonoured and the legal notice dated 14.12.2015 sent to the respondent returned with an endorsement "Not Claimed" on 23.12.2015. However, the trial court had dismissed the said complaint on the ground that the petitioner has filed the complaint on 29.12.2015 which is before the expiry of 15 days from the date on which notice has been served on the respondent i.e., on 23.12.2015 and the cause of action arose only on 08.01.2016, which is wholly unsustainable. Accordingly, he prays for allowing the criminal original petition.



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

5. Admittedly, the cheque bearing No.221997 dated 08.12.2015 for a sum of Rs.15,00,000/- was issued by the accused to the complainant on 08.10.2015 and the same was presented for collection on 08.12.2015, which was returned on 09.12.2015. Thereafter, the legal notice was sent to the respondent on 14.12.2015 and the same was returned as “Not claimed” on 23.12.2015. Pursuant to which, the complainant has filed a complaint u/s 138 of N.I. Act before the trial court and the same was dismissed vide impugned judgment on the ground of violation of Section 138(c) of N.I. Act. It is relevant to extract Section 138(c) of the N.I. Act, which is as follows :

“(c)the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.”

6. A perusal of the above provision reveals that the drawer of said cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice. Hence, 15 days is granted to the respondent to make the payment of the cheque amount. If the respondent fails to do so, the petitioner is entitled to file a complaint u/s 138 of N.I. Act.



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However, in the present case the cause of action arose only on 08.01.2016 and before the expiry of 15 days to make the payment, the petitioner filed the complaint before the trial court, which is a premature complaint. By considering the above aspects, the trial court has rightly dismissed the complaint filed by the petitioner, which cannot be said to perverse or illegal and this Court is not inclined to interfere with the same.

7. Further, in order to grant leave, a case should be made out, but the present case bristles with infirmities which strikes at the root of the findings recorded. Further, in the case on hand, the petitioner, has not made out of a case, where the findings are so very perverse that there has been miscarriage of justice warranting this Court to grant leave to set right the wrong that has been committed by the court below.

8. No infirmities or other materials are placed which necessitates relook into the findings recorded by the court below and granting leave to appeal would be nothing but a travesty of justice insofar as the respondent is concerned, who has been acquitted through a well considered judgement passed by the court below.



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M.DHANDAPANI, J.

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9. In the aforesaid circumstances, no case is made out by the petitioner for grant of leave and accordingly, this Criminal Original Petition stands dismissed. Consequently, the Criminal Appeal is rejected at the SR stage itself.

25.04.2024

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

1.The District Munsif cum Judicial Magistrate, Kodumudi.

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in
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