

Crl.O.P.No.16278 of 2015
in
Crl.A.SR.No.11751 of 2015

P.DEVADASS, J.

The appellant/complainant in the trial court in a cheque bouncing case seeks leave of this Court to appeal as against the order of acquittal passed in C.C.No.276/2006 by the learned Judicial Magistrate No.I, Gobichettipalayam.

2. The complainant instituted a private complaint on the footing of Ex.P2 cheque for Rs.7 lakhs, stated to have been issued by the respondent, which has become an useless cheque, because there was no sufficient funds in his bank account. Oral and documentary evidence has been adduced.

3. The respondent, an Advocate propounded a defence theory that he issued a blank cheque in favour of his senior advocate, who in turn filled it up and made it the subject cheque/Ex.P2 in the name of the complainant.

4. The trial court took the view that PW1/complainant has not proved that on the relevant date he had Rs.7 lakhs in his bank account.

5. In this connection, the learned counsel for the petitioner/appellant submitted that on the date when the defence theory was propounded, the senior has already gone to meet his maker. The learned counsel for the

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petitioner would further contend that when as much as the signature in Ex.P2 has been admitted, the legal presumption arises. PW1 also deposed that he gave the money out of the cash on his hand. There is no law or rule that a creditor must always advance loan from his bank account. Further learned counsel for the petitioner/appellant would submit that when plea of no consideration for Ex.P2 has been raised by the accused, that defence has to be proved by the accused and not by the complainant, it is like putting the cart before the horse. The trial court actually placed the defence theory on the shoulders of the complainant and thus, the findings recorded by the trial court is suffering from legal perversity.

6. I have anxiously considered the submissions of the learned counsel for the petitioner/appellant and also perused the impugned Judgment. This appeal presents certain eminently arguable points.

7. Petition allowed. Leave granted.

06.07.2015

Index : yes/no
Internet : yes/no
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