

Crl.O.P.No.498 of 2015in**Crl.A.SR.No.912 of 2015****R.MALA, J**

Date of Reserving the Judgment	Date of Pronouncing the Judgment
10.03.2015	11.03.2015

This Criminal Original Petition is filed to grant leave to prefer an appeal against the judgment of acquittal acquitting the respondent under Section 138 of the Negotiable Instruments Act.

2. The learned counsel for the petitioner would submits that the petitioner has got a fair chance for success in the appeal. Once the respondent herein had admitted to settle the amount, the Trial Court ought not to have held that the complainant has not proved that the cheque has been issued to discharge the legally subsisting liability. The Trial Court has held that the cheque has been issued only as a security for the loan availed in the year 1998. The learned counsel would further submit that once issuance of the cheque and the signature in the cheque has been admitted, the petitioner is entitled to invoke presumption under Section 118 and 139 of the Negotiable

Instruments Act, 1981 which is a rebuttable presumption. However, the said presumption was not rebutted by the respondent by letting in evidence. That factum was also not considered by the Trial Court. Hence, the learned counsel for the petitioner prayed for granting leave to prefer an appeal.

3. Considering the argument advanced by the learned counsel for the petitioner and on perusal of the typed set of papers, notice, reply notice, I am of the view that whether the Cheque has been issued to discharge the legally subsisting liability or that it was issued only as a security for availing loan in the year 1998 cannot be decided at this stage and the same has to be decided only after considering the oral and documentary evidence.

4. In view of the above stated position, I am of the view that it is a fit case to grant leave to prefer an appeal. In the result, the Criminal Original Petition is allowed.

11.03.2015

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Pre-Delivery Order made in
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Dated : 11.03.2015