



WEB COPY



Crl.O.P.No.4506 of 2022

Crl.O.P.No.4506 of 2022 in
Crl.A.SR.No.7885 of 2022

R.PONGIAPPAN, J.

This petition has been filed to grant special leave to file appeal against the judgment dated 01.12.2021 passed in STC.No.1231 of 2017 on the file of the Judicial Magistrate-II, Salem (FAC).

2. The petitioner is the complainant in the above referred case and he filed complaint before the trial court alleging that the respondent is committed offence punishable under section 138 of NI Act. After full-fledged trial, the learned Judicial Magistrate-II, Salem(FAC) rendered judgment wherein it has been held that complainant has not proved his case and ultimately acquitted the respondent. Challenging the same, the petitioner is intended to file appeal for which he filed the present criminal original petition for granting leave.

3. Now on go through the judgment rendered by the trial court, the learned court observed that in respect to the payment there was a



Crl.O.P.No.4506 of 2022

discrepancy in the evidence given by PW1, further serial number found in the counter file pertains to the cheque is having some discrepancy and therefore it cannot be held that the respondent is committed offence under Section 138 of NI Act. In this regard, the learned counsel appearing for the petitioner would contend that after admitting the signature found in the cheque, there was a presumption arisen under Section 139 of NI Act, but the court below without considering the same decided the case in favour of the respondent.

4. On considering the said submissions with the relevant records, here it is a case the respondent admitted the signature as signature found in the cheque is belongs to him. After admitting the same, it is for the respondent to show a probable defence as the cheque has not been issued for the enforcement of legally enforceable debt. Here is it a case, the evidence given by PW1 and DW1 in respect to payment of loan is required detailed appreciation. Therefore the reasons cited by the petitioner is sufficient to allow this application.



Crl.O.P.No.4506 of 2022

5. Accordingly, this criminal original petition is allowed.

WEB COPY

28.02.2022

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Note: Registry is directed to number the appeal,
if it is otherwise in order.



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