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Crl.OP (MD) Nos.12747 and 12764 of 2022
in
Crl.A (MD) SR Nos.14032 and 14034 of 2022

G. ILANGO VAN, J

These Criminal Miscellaneous Petitions have been filed to grant special leave to file appeal against the order of acquittal passed in STC Nos.566 and 567 of 2014, dated 10.03.2022 by the Judicial Magistrate No.1 (FTC at Magistrate Level), Madurai.

2. The common facts in brief:-

It is the case of the offence under section 138 of the Negotiable Instruments Act. It is stated by the petitioner that the accused person borrowed a sum of Rs.2,50,00/- each, on 12/01/2013 to meet out his urgent requirement. Towards the repayment of the above said loan, the disputed cheques, dated 26/02/2013 were issued by the accused person and they were presented for payment on the same day itself and that was returned as 'Account Closed, on 28/08/2013. Statutory notice was issued on 04/03/2013 demanding payment of the amount within 15 days and that was received by the accused person, on 06/03/2013. In spite of that, there was no payment. So



with these allegations, he filed a separate private complaints, which were taken cognizance in STC Nos.566 and 567 of 2014 by the trial court.

3.On the side of the prosecution, the complainant was examined as PW1 and 5 documents were marked. On the side of the defence, one witness was examined and 2 documents were marked.

4.At the conclusion of the trial process, the trial court found that the accused is not guilty of the offence under section 138 of the Negotiable Instruments Act, since the existence of liability between them was not established. Apart from that, it was also found that statutory notice was not served upon the accused.

5.Now challenging the above said judgment of acquittal, the complainant wants to file criminal appeals. These Criminal Miscellaneous Petitions have been filed seeking leave of this court to file the appeals.

6.Heard both sides and the entire judgment is perused.



7. According to the trial court, the statutory notice was not served personally upon the accused person. But it was served upon one unknown person and the accused denied the identity of the above said person, who received the acknowledgement.

8. It is the contention on the part of the petitioner to the effect that the above said demand notice was issued to the known address of the accused, so it must be construed as 'deemed service'.

9. Whether this argument is sustainable or not is a matter for consideration in the appeal to be decided.

10. Regarding the existence of the liability, the trial court has taken into account the date of issuance of the cheques and the acknowledgement of the previous and subsequent cheques that have been issued by the accused person. Whether from this, the non existence of the liability can be presumed or not, is also a matter for consideration in this appeal. So, these are the vital points that got to be decided in the main appeal.



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11. In view of the above facts, these Criminal Miscellaneous Petitions are **allowed** and accordingly, **leave is granted**. The Registry is directed to process the appeal papers, if they are found, otherwise in order.

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