



WEB COPY



CrI.O.P.No.7904 of 2023

in

CrI.A.Sr.No.75 of 2023

V.SIVAGNANAM, J

This petition is filed seeking to grant leave to file an appeal against the judgment, dated 08.12.2020 passed by the learned Judicial Magistrate-I, Namakkal in C.C.No.454 of 2018.

2. The learned counsel for the petitioner submitted that the petitioner is the complainant. The respondent is the accused in C.C.No.454 of 2018 on the file of the learned Judicial Magistrate No.1, Namakkal. The petitioner filed a complaint against the respondent-accused for the offence under Section 138 of the Negotiable Instruments Act for non-payment of Rs.10,00,000/- (Rupees ten lakhs only). The respondent issued two post-dated cheques as security, which were dishonoured due to "insufficient funds". Hence, he was prosecuted by the complainant. After trial, though the accused has not disputed the cheques and his signature, the learned Judge dismissed the complaint and acquitted the accused on the ground that the complainant failed to



prove the capacity to pay the cheque amount to the accused person, which is against the principles laid down by the Hon'ble Supreme Court.

The complainant is entitled for the presumption under Section 139 of Negotiable Instruments Act. He further submitted that the petitioner has got good case and hence, he prayed for granting leave to the petitioner file the appeal against the order of acquittal.

3. Heard the learned counsel for the petitioner and perused the materials available on record. There is no appearance for the respondent/accused, though an Advocate has entered appearance in the S.R. stage of this CrI.O.P..

4. On a perusal of the impugned judgment, it is noticed that in paragraph 10(a) and 10(b), the learned Judge had observed that the complainant failed to adduce evidence for having sufficient funds for granting loan to the accused person. The trial Court failed to appreciate and discuss about the presumption raised in favour of the complainant under Section 139 of Negotiable Instruments Act and also failed to



adduce reasons properly on the side of the complainant. Under these circumstances, the evidence has to be re-apprised and this is a fit case for granting leave to the petitioner. Prima-facie, the facts and law have to be re-appreciated. Legally also, the case has to be adjudicated by considering the grounds of appeal. Hence, leave is granted. Accordingly, this criminal original petition is allowed.

07.06.2023

srn



WEB COPY



V.SIVAGNANAM, J.

srn

Crl.O.P.No.7904 of 2023
in Crl.A.Sr.No.75 of 2023

07.06.2023