



CrI.O.P.No.404 of 2023 in CrI.A.Sr.No.403 of 2023

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V.SIVAGNANAM,J.

This petition has been filed to grant leave to the petitioner/appellant to file an appeal against the judgment dated 07.11.2022 passed in C.C.No.260 of 2017 by the learned V Fast Track Metropolitan Magistrate, Saidapet, Chennai.

2. The learned counsel for the petitioner submitted that, the petitioner filed a private complaint in C.C.No.260 of 2017 before the learned V Fast Track Metropolitan Magistrate, Saidapet, Chennai. against the respondent under Section 138 of Negotiable Instruments Act for non payment of Rs.31,67,970/-, towards the dishonoured cheque. He further submitted that, the Trial Court, vide judgment dated 07.11.2022, acquitted the respondent under Section 138 of Negotiable Instruments Act, on the ground that the accused was in the custody from 15.11.2014 to 23.12.2016. The disputed cheque was issued by the petitioner on 09.03.2016 while he was in jail and it



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was not properly explained and no endorsement was made in the cheque.

The learned counsel for the petitioner further submitted that the respondent/accused has categorically admitted his signature in the cheque.

But, the trial Court, without appreciating the evidence adduced by the petitioner in proper perspective, has passed the impugned acquittal order and hence, leave may be granted to file Criminal Appeal.

3. Heard the learned counsel for the petitioner and I have perused the materials on record.

4. It is seen from the records that, the Trial Court has acquitted the respondent from the charge under Section 138 of Negotiable Instruments Act. The trial Court, in paragraph 6 of its judgment, observed that the disputed cheque was issued on 09.03.2016 by the accused while he was in jail during the period from 05.11.2014 to 12.12.2016. In the absence of any endorsement made by the jail authorities, the trial Court disbelieved the cheque where it was issued and signed by the accused. The arguments of the



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learned counsel for the petitioner is that the accused issued various cheques with regard to repayment of transaction between the complainant and the accused. The accused did not dispute the transaction between them and did not dispute the issuance of various cheques. Apart from this, various cheques issued by the accused on various dates but the dates in the cheque indicated that the same was issued while the accused was in custody during the period from 05.11.2014 to 23.12.2016. When the other cheques were honoured only this particular cheque was dishonoured. In this circumstance, *prima facie*, there is a case for re-appreciating the evidence both on facts and law. As such, this court is inclined to grant leave to the petitioner.

5. Accordingly, this Criminal Original petition is allowed, granting leave to the petitioner to file the Criminal Appeal. Registry is directed to number the Criminal Appeal, if it is otherwise in order.

09.01.2023

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