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Crl.OP No.536 of 2023 in

Crl.A.SR 63261 of 2022

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2023

CORAM:

THE HONOURABLE MR. JUSTICE **V.SIVAGNANAM**

Crl.OP No.536 of 2023 in
Crl.A.SR 63261 of 2022

H.K.Bhojan

... Petitioner

Vs.

1.Diamond Equipments and Engineers,
rep. by its Sole Proprietor Mr.P.Ravi,
No.G-1, Santhosam Apartment,
B Block, 2nd Street, VGS Nagar,
G.N.Mills Post, Coimbatore.

2. P.Ravi, Proprietor,
Diamond Equipments and Engineers,
No.G-1, Santhosam Apartment,
B Block, 2nd Street, VGS Nagar,
G.N.Mills Post, Coimbatore.

... Respondents

PRAYER: Criminal Original Petition filed under Section 378(4) of Cr.P.C. to grant leave to file appeal against the judgment dated 26.10.2022, passed by the learned District Munsif-cum-Judicial Magistrate, Kotagiri in STC No.1757 of 2016.

For Petitioner : Mr. L.Mouli



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ORDER

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This petition has been filed to grant leave to the petitioner to prefer Criminal Appeal against the order of acquittal dated 26.10.2022, passed by the learned District Munsif-cum-Judicial Magistrate, Kotagiri in STC No.1757 of 2016.

2. The petitioner herein is the complainant and the respondents herein viz., Diamond Equipments and Engineers, (Proprietorship Firm) and P.Ravi (Proprietor of the Firm) are A1 and A2 in the above case in STC No.1757 of 2016. The petitioner filed a complaint under section 138 of Negotiable Instruments Act against the respondents/accused stating that, the second respondent borrowed a sum of Rs.11,30,000/- on various dates from 14.08.2015 to 25.01.2016; and thereafter, to repay the entire amount, the second respondent, in the capacity of sole proprietor of A1 Firm, issued a post dated cheque, bearing No.108077 for a sum of Rs.11,30,000/- . The petitioner presented the above cheque for collection through his bank viz., Vijaya Bank, Kotagiri on 19.09.2016 and the same was dishonoured on 20.09.2016, with an endorsement " Drawers signature differs" . Therefore, the petitioner issued



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a notice on 27.09.2016 to pay the amount towards the dishonoured cheque, but, the second respondent replied on 24.10.2016 with false allegation. Hence, the petitioner filed the complaint seeking compensation towards the cheque amount.

3. Before Trial Court, on the side of the petitioner, the petitioner and one another witness were examined as PW1 and PW2 respectively and marked 9 documents as Ex.P1 to Ex.P9. On the side of the defence, two witnesses were examined as DW1 and DW2 and 8 documents were marked as Ex.D1 to Ex.D8.

4. After perusing the oral and documentary evidence, the Trial Court acquitted the accused vide its judgment dated 26.10.2022. Aggrieved over the same, the petitioner filed the present petition to grant leave to prefer the Criminal Appeal.

5. The learned counsel for the petitioner submitted that the Trial Court



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has acquitted the respondents on the ground that the second respondent is not the proprietor of the first respondent Firm and hence, no liability can be fastened upon him for dishonouring of cheque. He further submitted that, the second respondent had signed the cheque for the first respondent firm and therefore, the presumption of legal recoverable debt under Section 139 of Negotiable Instrument is established by the petitioner. However, the Trial Court, without appreciating the documents produced by the petitioner in proper perspective, has acquitted the respondents and hence, leave may be granted to the petitioner to file the Criminal Appeal.

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

7. A perusal of the records reveals that, the petitioner filed a complaint under Section 138 of Negotiable Instruments Act against the respondents before the Trial Court, for payment of the dishonored cheque amount. According to the petitioner, the second respondent received a total amount Rs.13,00,000/- on various dates and to repay the same, the second respondent,



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under the capacity of Proprietor of the first respondent Firm, issued a cheque bearing No.108077 for a sum of Rs.11,30,000/- and it was returned by the petitioner's bank viz., Vijaya Bank, Lotagiri on 20.09.2016, with an endorsement " Drawers signature differs" . Therefore, after legal notice issued to the respondents, the petitioner filed the above said complaint.

8. The Trial Court, in its judgment dated 26.10.2022, has observed that, the cheque was not belongs to the second respondent and it belongs to one Midhun Chakkaravarthy, son of second respondent. It reveals from the above judgment that one Revathi, Branch Manager of ICICI Bank, while deposing evidence as PW2, stated that A2(second respondent herein) is not the drawer of the cheque and his son Midhun Chakkaravarthy is the proprietor of the A1 Firm. Likewise, the DW1, Manager of ICIC Bank also deposed that the cheque is not belonged to the second respondent. Therefore, the Trial Court held that, the second respondent is not the drawer of the cheque and it belongs to his son Midhun Chakkaravarthy and hence, no liability can be fastened upon him for the dishonour of the cheque.

9. Therefore, upon perusing the evidence and the documents, the Trial



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Court has rightly come to the conclusion that offence under Section 138 of Negotiable Instruments Act is not made out against the respondents/A1 and A2. Therefore, this Court is of the view that the above finding of the Trial Court is legally sustainable and there is no reason to interfere with that acquittal order. As such, there is no prima facie case, to allow the petition and the same is liable to be dismissed, as it has no merits.

10. Accordingly, this Criminal Original Petition is dismissed. Consequently, the Criminal Appeal is also rejected at the SR stage itself.

10.01.2023

Index: Yes/No
Internet: Yes/No
mst

To:

1. The District Munsif cum Judicial Magistrate, Kotagiri.



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V.SIVAGNANAM, J.
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