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Crl.O.P.No.1693 of 2023
in
Crl.A.SR.3020 of 2023

V. SIVAGNANAM, J.

This petition is filed to grant special leave to the complainant/ petitioner to prefer appeal from the order of acquittal passed on 24.11.2022 in C.C.No.236 of 2018, on the file of the Judicial Magistrate Fast Track Court (M.L), Alandur.

2. The learned counsel for the petitioner submitted that the petitioner is the complainant and filed a complaint against the respondent/accused for the offence under section 138 of Negotiable Instruments Act. The accused issued a cheque for a sum of Rs.7,50,000/- dated 28.4.2018 bearing cheque No.799445 towards repayment of the amount he already borrowed from the petitioner. Since the cheque issued by the respondent was dishonoured for want of sufficient funds, the petitioner, after issuing legal notice, filed a private complaint before the trial court.

3. The complainant examined himself as PW1 and marked four documents. The accused neither examined any witness, nor filed any



document. During the cross examination, the respondent admitted that he repaid the entire amount borrowed from the complainant and the cheque was issued as security for the debt, but he has not examined any witnesses and had not done anything to get back the cheque which was allegedly issued as security, however, the trial court, without considering the above facts acquitted the accused. Therefore the same needs re-appreciation of the facts. Hence he seeks to grant leave of this court to file appeal.

4. Heard the learned counsel for the petitioner and perused the materials placed on record.

5. On perusal of records, the statement recorded under section 313 Cr.P.C., reveals that the respondent admitted that he has repaid the amount borrowed from the complainant and he issued the disputed cheque only as security, but he has not produced any evidence to show that the disputed cheque has been issued as a security. On perusal of records, there is no evidence available to show that the cheque has been issued as security. Therefore, it needs detailed appraisal of the entire evidence. There is a prima facie case made out factually and legally. Hence this court is



inclined to grant leave to the petitioner. Accordingly, leave is granted and this petition is allowed

27.01.2023

msr

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



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