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Crl.O.P.No.6791 of 2023 in Crl.A.SR.No.6600 of 2023

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in
Crl.A.SR.No.6600 of 2023**

V. SIVAGNANAM, J.

This Criminal Original Petition has been filed to grant leave to the petitioner to file the Criminal Appeal against the judgment of the Principal Sessions Judge, Tiruppur in C.A.No.20 of 2022 dated 25.11.2022.

2. Despite notice served on the respondent and his name printed in the cause list, none appeared for the respondent.

3. The learned counsel for the petitioner submitted that the petitioner is the complainant and the respondent is the accused in C.C.No.222 of 2015 on the file of the Judicial Magistrate, Fast Track Court, Tiruppur. The complainant filed a complaint against the accused for the offence under section 138 of the Negotiable Instruments Act for dishonour of the cheque given by the accused for a sum of the Rs.3 lakhs. After trial, the trial Court found the accused guilty for the offence under section 138 of the Negotiable Instruments Act. Aggrieved over the same, the accused filed an appeal in C.A.No.20 of 2022 before the Principal Sessions Judge, Tiruppur. The appellate Court allowed the appeal by setting aside the conviction and sentence imposed by the



trial Court. Aggrieved by this, the present petition has been filed seeking leave to file an appeal against the judgment of acquittal passed by the first appellate Court.

4. The learned counsel for the petitioner has further contended that the appellate Court failed to consider the presumption in favour of the complainant under section 139 of the Negotiable Instruments Act and also the reason assigned for allowing the appeal is unsustainable. It is his further contention that once the issuance of the cheque and signature in it is admitted, the complainant need not prove the sufficiency of funds for lending loan to the accused persons. Hence, submitted that there are arguable points in favour of the petitioner and seeks leave for filing the appeal.

5. Considered the submissions of the learned counsel for the petitioner.

6. A perusal of records reveal that the petitioner is the complainant in C.C.No.222 of 2015 and the respondent is the accused. The complainant filed the complaint for the offence under section 138 of the Negotiable Instruments Act for dishonour of cheque issued by the accused for a sum of Rs.3 lakhs. As the cheque given by the accused has been dishonoured, after issuing statutory



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notice, a private complaint has been filed before the trial Court. The trial Court, after trial, convicted the accused for the offence under section 138 of Negotiable Instruments Act. On the appeal filed by the accused, the conviction and sentence has been set aside and the appeal has been allowed. Now, the present petition has been filed seeking leave to file an appeal against the judgment of the first appellate Court.

7. Considering the submissions of the petitioner and also on perusal of the judgments of the trial Court and the first appellate Court, it is seen that there are arguable points for reappraisal of the evidence and also the appellate Court failed to consider and discuss the presumption raised under section 139 of Negotiable Instruments Act and has not discussed how the accused rebutted the presumption and hence, this Court is of the view that there is prima facie case on fact and law for reappraising the judgment of the first appellate Court.

8. Accordingly, leave is granted and this Criminal Original Petition is allowed.

08.06.2023

vrc

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



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