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Crl.O.P.No.7049 of 2023 in Crl.A.SR.No.8469 of 2023

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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 III Additional District and Sessions Judge, Coimbatore in C.A.No.512 of 2018 dated 20.09.2022.

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.80 of 2017 on the file of the Judicial Magistrate, Fast Track Court Magisterial Level – 2, Coimbatore. 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.6 lakhs. After trial, the trial Court found the accused guilty for the offence under section 138 of the Negotiable Instruments Act and convicted the accused. Aggrieved over the



same, the accused filed an appeal in C.A.No.512 of 2018 before the III Additional District and Sessions Judge, Coimbatore. 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 first appellate Court failed to consider the admission of the accused in his reply notice about issuing of the cheque and acquitted the accused on the ground that the complainant has not let in any evidence to prove the loan transaction and allowed the appeal. It is his further contention that without any evidence, the first appellate Court set aside the conviction of the trial Court. Hence, submitted that the evidence has to be reappraised and 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.80 of 2017 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.6 lakhs. As the cheque given by the accused has been dishonoured, after issuing statutory 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 of the trial Court 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. A perusal of the judgment of the first appellate Court and the reply sent by the accused reveals that the accused admitted issuance of cheque to the complainant. However, the first appellate Court has not discussed about the satisfactory rebuttal of the accused person against the presumption in favour of the complainant under section 139 of the Negotiable Instruments Act and by recording that the complainant failed to prove the loan transaction, acquitted the accused and has not explained how the accused satisfactorily rebutted the presumption under section 139 of the Negotiable Instruments Act in favour of the complaint. 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.



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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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