



Crl.O.P.No.6255 of 2023

in

Crl.A.Sr.No.12906 of 2023

V.SIVAGNANAM, J

This petition is filed seeking to grant leave to file an appeal against the judgment dated 20.02.2023 passed by the learned Judicial Magistrate-I, Pollachi in S.T.C.No.3600 of 2016.

2.The learned counsel for the petitioner submitted that the petitioner is the complainant. The respondent is the accused in S.T.C.No.3600 of 2016 on the file of the learned Judicial Magistrate No.1, Pollachi. He further contended that the complainant gave a sum of Rs.4,00,000/- to the respondent-Accused as hand loan on 01.07.2016, and way of repayment, the accused gave a Cheque bearing No.548165 dated 01.09.2016. When the cheque was presented for collection, it was returned as “Funds Insufficient”. Therefore, the complainant issued a statutory notice dated 08.09.2016 to the accused, which was received by the accused on 10.09.2016. Since the amount remained unpaid, the complainant filed a complaint under Section 138 of the Negotiable



Instruments Act. Before the trial Court, he examined himself as P.W1 and marked 4 documents, i.e. Cheque, Return Memo, Advocate Notice and Acknowledgement Card. The respondent-Accused did not let in any evidence and no document was filed. The trial Court erroneously shifted the burden of proving the signature in the cheque upon the complainant in spite of sufficient evidence, i.e the Bank has not returned the cheque on the ground that the signature differs, and the cheque has been returned only for “funds insufficient. In these circumstances, the trial Court overlooked the fact and has not considered the legal position fixing wrongly the onus of proof upon the complainant and dismissed the complaint. Further, the learned Judge dismissed the complaint on the ground that the source of amount in the hands of the complainant is not proved, which is unnecessary. Once the signature in the cheque is proved, the presumption under Section 139 of N.I Act will come in favour of the complainant. The trial Court overlooked the said aspect. Therefore, the evidence has to be re-apprised and there is a *prima facie* case made out and hence, he prayed for granting leave to the petitioner file appeal against the order of acquittal.



3.The learned counsel appearing for the respondent supported the judgment of the trial Court. He has also contended that the accused has denied her signature upon the cheque from the initial stage and further, the complainant had not let in any evidence. The cheque amount was given to the accused and when the complainant had received the cheque from the accused, and the husband of the accused lived separately, since there is a strained relationship between the husband and wife, the disputed cheque belongs to the joint account of the accused and her husband. The cheque in dispute has been misused by the complainant by colluding with her husband Palanisamy. In these circumstances, the trial Court has rightly dismissed the complaint. Thus he pleaded for dismissal of this petition.

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

5.On a perusal of the impugned judgement, it is noticed that in Ex.P2 - Return Memo, the Bank returned the cheque as “funds



insufficient” and it also noticed that the Bank did not find any indifference in the signature upon the cheque. It is not disputed that the cheque or account was maintained by the accused with her husband and in these circumstances, it is also the duty of the accused to show and probablise as to how the cheque went into the hands of the complainant, but she had not cross examined on this aspect as well as not let in evidence. In these circumstances, the trial Court wrongly fixed the burden of proof upon the complainant. Further, when the cheque is not in dispute, the source of income for lending the amount upon the complainant is not warranted. Section 139 of N.I.Act raised a presumption in favour of the accused with regard to the consideration as well the legal liability. In these circumstances, the trial Court overlooked this aspect and there is a *prima facie* on facts and law to be re-apprised. Hence, leave is granted. Accordingly, this criminal original petition is allowed.

20.06.2023

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