



WEB COPY



Crl.O.P.No.8304 of 2023 in Crl.A.SR.No.17746 of 2023

**Crl.O.P.No.8304 of 2023
in
Crl.A.SR.No.17746 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 Judicial Magistrate No.I, Gobichettipalayam in STC.No.99 of 2018 dated 17.03.2023.

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 STC.No.99 of 2018 on the file of the Judicial Magistrate No.I, Gobichettipalayam. 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.3,50,000/-. Before the trial Court, the complainant examined himself as P.W.1 and also filed 8 documents Ex.P.1 to Ex.P.8. The respondent/ accused also examined D.W.1 and marked one document Ex.D.1.

On considering the evidence and documents, the trial Court acquitted the



Crl.O.P.No.8304 of 2023 in Crl.A.SR.No.17746 of 2023

accused on the ground that the complaint failed to let in satisfactory evidence to

prove his capacity to pay the loan amount of Rs.3,50,000/- to the accused.

However, the accused has not disputed the issuance of the cheque and the signature upon it.

4. The learned counsel for the petitioner has further contended that the presumption under section 139 of the Negotiable Instruments Act is in favour of the petitioner and the trial Court has failed to consider the presumption in favour of the complainant and acquitted the accused without assigning any reason and the ground assigned by the trial Court is unsustainable. Hence, the present petition has been filed seeking leave to file an appeal against the judgment of acquittal passed by the trial Court and 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 STC.No.99 of 2018 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.3,50,000/-



Crl.O.P.No.8304 of 2023 in Crl.A.SR.No.17746 of 2023

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, acquitted the accused. On a perusal of the impugned judgment, in para 24, the trial Court has stated that the complainant had not let in any evidence to prove his capacity to lend the loan of Rs.3,50,000/- to the accused. But, the trial Court had not discussed the presumption in favour of the complainant, since the accused has not disputed the issuance of cheque and the signature upon it. Under these circumstances, the evidence has to be reappraised and there is prima facie case on factual and legal aspects for reappraising the judgment of the trial 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.



WEB COPY



Crl.O.P.No.8304 of 2023 in Crl.A.SR.No.17746 of 2023

V. SIVAGNANAM, J.

VTC

**Crl.O.P.No.8304 of 2023
in
Crl.A.SR.No.17746 of 2023**

08.06.2023