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Crl.O.P.No.23310 of 2022 in Crl.A.Sr.No.39776 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.03.2023

PRONOUNCED ON: 06.04.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.O.P.No.23310 of 2022

in

Crl.A.Sr.No.39776 of 2022

K.Gopikrishnana

...

Petitioner

/vs/

N.Ganesan

...

Respondent

Prayer : Criminal Original Petition has been filed under Section 378(4) Cr.P.C. to grant leave to the petitioner to prefer the above Criminal Appeal as against the order of acquittal dated 26.07.2022 passed in Crl.A.No.24 of 2022 on the file of the Principal Sessions Judge, Chennai reversing the Judgment dated 03.02.2022 passed in C.C.No.2048 of 2016 on the file of the Metropolitan Magistrate FTC III (FAC) at Saidapet, convicting the respondent for the offence under Section 138 of the Negotiable Instruments Act, 1881 and sentencing the respondent to undergo simple imprisonment for nine months.

For Petitioner

... Mr. K.P.Sanjeev Kumar

Respondent

... Mr.N.Nithianandam



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ORDER

This criminal original petition has been filed to grant leave to the petitioner to prefer the above Criminal Appeal as against the order of acquittal dated 26.07.2022 passed in Crl.A.No.24 of 2022 on the file of the Principal Sessions Judge, Chennai, reversing the Judgment dated 03.02.2022 passed in C.C.No.2048 of 2016 on the file of the Metropolitan Magistrate FTC III (FAC) at Saidapet.

2.The fact of the case is that the petitioner/appellant is the complainant. The respondent is an accused in C.C.No.2048 of 2016 on the file of the Metropolitan Magistrate, FTC - III (FAC) at Saidapet, Chennai.

3.The petitioner/complainant filed a complaint against the respondent /accused for an offence under Section 138 of N.I.Act for dishonour of cheque. After trial, the trial Court found guilty and sentenced the accused to undergo simple imprisonment for nine months and to pay the cheque amount of Rs.1,59,60,000/- as compensation to the complainant



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under Section 357 (3) Cr.P.C. Aggrieved by this, the accused filed an appeal in Crl.A.No.24 of 2022 before the Court of Sessions at Chennai.

The appellate Court, on considering the evidence and judgment of the trial Court, acquitted the accused vide its judgment dated 26.07.2022. Aggrieved by this finding, the complainant filed this petition to grant leave to prefer the criminal appeal against the order of acquittal dated 26.07.2022 passed in Crl.A.No.24 of 2022 on the file of the Principal Sessions Judge, Chennai.

4.The learned counsel for the petitioner submitted that the complainant executed a registered power of attorney deed in document No.3545 of 2014 in favour of the respondent/accused to deal with the property mentioned in the document. The respondent /accused, without the knowledge and information to the complainant, executed a registered sale deed in respect of the said property in favour of his wife Mrs.G.Sujatha vide document No.3929 of 2014 dated 15.05.2014 at SRO, Tamparam. Thereafter, his wife executed three registered sale deeds in respect of the



property in three portions in three third parties on 20.11.2014, 10.12.2014 & 24.08.2015, after receiving the total sale consideration of Rs.1,59,00,000/-from the purchasers. Since the respondent/accused failed to give the sale consideration to the petitioner/complainant as promised, he gave the complaint to CCB police, Chennai. After enquiry, the respondent/accused promised to return the total sale consideration of Rs.1,59,60,000/- within three months. In respect of the same, he gave a cheque bearing No.950202 dated 01.03.2016 drawn on Indian Bank, Ottery Branch, Chennai, for a sum of Rs. 1,59,60,000/-. On presentation of the cheque by the complainant, it was returned for insufficient funds. After issuing legal notice, the complainant filed a complaint for the offence under Section 138 of N.I. Act.

5.After trial, the trial Court found guilty and convicted the accused and sentenced him as stated above and the appellate Court found not guilty and acquitted the accused. The appellate Court did not apprise the evidence properly and completely overlooked the provisions and failed to appreciate



the statutory presumption drawn under Sections 118 and 139 of N.I.Act.

The Statute mandates that once the signature of an accused on the cheque/negotiable instrument are established, then these 'reverse onus' clauses become operative. The obligation shifts upon the accused to discharge the presumption imposed upon him. In this case, the accused failed but the appellate Court overlooked these aspects. Hence, the evidence has to be reappraised and seeking to grant leave to the petitioner to prefer the above criminal appeal.

6.The learned counsel appearing for the respondent supported the judgment of the appellate Court and contended that the complainant did not establish the enforceable debt. The documents filed by the accused D1 to D7 have disclosed the probable defence of the accused. The appellate Court, after due consideration of all the relevant factors of the case, found not guilty and acquitted the accused. The well reasoned judgment of the appellate Court need not be disturbed and there is no ground for interference, warranting and re appreciation of the evidence and no ground



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for granting leave to file the criminal appeal and thus, pleaded to dismiss the criminal original petition.

7.I have considered the matter in the light of the submissions made by the learned counsel for the petitioner as well as the learned counsel for the respondent.

8.I have gone through the impugned judgment and noticed that the accused did not dispute the signature on the cheque Ex.P1. Once the signature on the cheque is admitted, the statutory presumption under Sections 118 & 139 of N.I.Act would attract, then these 'reverse onus' clauses become operative. The obligation shifts upon the accused to discharge the presumption imposed upon him. Here, the trial Court found guilty by applying the statutory presumption and recorded that the accused failed to rebut the statutory presumption but the appellate Court disbelieved the complainant's claim and observed that he had failed to establish the sale consideration was at Rs.1,59,60,000/-. This has to be reappraised and there is a prima facie ground to grant leave to the



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petitioner to prefer the criminal appeal and the same is liable to be allowed.

Accordingly, this criminal original petition is allowed.

Index : Yes/No
Internet : Yes/No
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V.SIVAGNANAM ,J.

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