



WEB COPY



Crl.O.P.No.6646 of 2023
in
Crl.A.Sr.No.45896 of 2022

V.SIVAGNANAM, J

This petition is filed seeking to grant leave to file an appeal against the judgment dated 19.07.2022 passed by the learned Judicial Magistrate-II, Ponneri in S.T.C.No.595 of 2018.

2. The learned counsel for the petitioner submitted that the petitioner is the complainant. The respondent is the accused in S.T.C.No.595 of 2018 on the file of the learned Judicial Magistrate No.1, Namakkal. The petitioner filed a complaint against the respondent-accused for the offence under Section 138 of the Negotiable Instruments Act for dishonour of cheque for a sum of Rs.12,00,000/- (Rupees twelve lakhs only). In this case, though the accused has not disputed the issuance of cheque and signatures upon it, he has disputed the capacity of the complainant for payment of such huge amount. The trial Court, overlooking the presumption raised in favour of the complainant under Section 139 of N.I.Act, accepted the contention of



the accused that the complainant failed to prove the capacity to pay the cheque amount and dismissed the complaint and acquitted the accused, which is against the principles laid down by the Hon'ble Supreme Court. Since the accused has not disputed his signature upon the cheque and the cheque has been issued on his account, the dismissal of the complaint on that ground alone is unsustainable. He further submitted that the petitioner has got good case and hence, he prayed for granting leave to the petitioner file the 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 complainant failed to lead any evidence for source of payment of Rs.12,00,000/- to the respondent and he has also disputed the transaction between them. 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 paragraph 20, the learned Judge had observed that the complainant failed to adduce evidence for having source of income for granting loan to the accused person. The trial Court failed to appreciate and discuss about the presumption raised in favour of the complainant under Section 139 of Negotiable Instruments Act and also failed to discuss about the satisfactory rebuttal of the accused against the presumption in favour of the complainant. Under these circumstances, non proving of source of income for payment of loan is not the ground to dismiss the complaint under Section 138 of N.I. Act, when the accused has not disputed the cheque in question and his signature upon it. The presumption under Section 139 of N.I. Act has to be satisfactorily rebutted in the manner known to law and therefore, this is a fit case for granting leave to the petitioner. Prima-facie, the facts and law have to be re-appreciated. Hence, leave is granted. Accordingly, this criminal original petition is allowed.

20.06.2023

srn



WEB COPY



V.SIVAGNANAM, J.

srn

Crl.O.P.No.6646 of 2023
in
Crl.A.Sr.No.45896 of 2022

20.06.2023