



Crl.O.P.No.22547 of 2023 in Crl.A.SR.No.48502 of 2023

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M.NIRMAL KUMAR., J.

The petitioner as a complainant filed a private complaint against the respondent/accused under Section 138 of the Negotiable Instruments Act, 1881 in C.C.No.3533 of 2017 before the learned Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai (trial Court). During trial, the petitioner examined himself as PW1, yet another witness as PW2 and marked seven documents as Exs.P1 to P7. On the side of the respondent/accused neither examined any witness nor marked any document. The trial Court, after full-fledged trial finding that the respondent not discharged his liability and given no reason for issuance of cheque to the petitioner, convicted him for offence under Section 138 of the Negotiable Instruments Act, 1881, and sentenced him to undergo three months Simple Imprisonment and directed to pay a fine of Rs.6,80,000/- (Rupees six lakhs and eighty thousand only) compensation to the defacto complainant *vide* judgment, dated 31.08.2022. Aggrieved over the same, the respondent/accused preferred an appeal in C.A.No.348 of 2022 before the learned VII Additional District and Sessions Judge, Chennai (lower appellate Court). The learned VII Additional District and Sessions Judge, by judgment, dated 28.07.2023 allowed the appeal setting aside the conviction and sentence imposed by the trial Court. As against the same, the present leave petition and the criminal appeal.



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2.The learned counsel appearing for the petitioner submitted that the respondent/accused not denied the issuance of cheque and its signature. Ex.P1 is an undertaking letter given by the respondent to discharge his liability for the cheques (Exs.P2 & P3) issued. The trial Court after ful-fledged trial on considering the evidence and material, rightly convicted the petitioner. On the other hand, the lower appellate Court not considered the appeal in the right perspective and gave its own reason that the accused admitted the signature in the cheque and the failure of the accused to give reply cannot stand as a ground for conviction. This according to the petitioner is against the statutory presumption under Sections 118 & 139 of the Negotiable Instruments Act, 1881. Further, the lower appellate Court finding is that if two possibilities available, one in favour of the accused to be considered, is on a wrong premise failing to consider the conviction of the respondent by the trial Court.

3.Finding reason and force in the submissions made by the learned counsel for the petitioner, this Court is inclined to grant leave. Accordingly, leave is granted.

12.10.2023

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Note: Registry is directed to number the Criminal Appeal, if it is otherwise in order and the post the same for Admission.



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