



WEB COPY



CRL.O.P.NO.3404 OF 2023
IN CRL.A.SR.NO.54134 OF 2022

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V.SIVAGNANAM, J.

This Criminal Original Petition is filed to grant special leave for preparing an appeal against the judgment of acquittal passed by the learned Judicial Magistrate No.1, Udumalpet, Tiruppur District, in C.C.No.14 of 2016 dated 27.07.2022 by acquitting the accused of charges under Section 138 of Negotiable Instruments Act, 1881.

2. The learned Senior Counsel for the petitioner submitted that the petitioner / complainant filed a complaint against the respondent / accused for the offence punishable under section 138 of Negotiable Instruments Act, 1881. The learned Trial Judge dismissed the said complaint in C.C.No.14 of 2016 on 27.07.2022 on the ground that for the complaint, being filed through Power Agent, no such power deed has been filed and there is no specific power given to the complainant to file criminal proceedings. But, in fact, the complainant had been granted a general power to conduct civil and criminal proceedings whenever



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necessary. Therefore, the observation of the Trial Court is against the fact.

Further, the defense taken that the alleged disputed cheque was given for the purpose of security. In such cases, burden is cast upon the accused and the Trial Court has failed to appreciate the law in proper perspective. Hence, he prefers to file an appeal against acquittal of the accused, for which, he seeks special leave of this Court to file a Criminal Appeal.

3. The learned counsel for the respondent supported the judgment of the Trial Court and also contended that the respondent / accused properly represented the presumptions raised under Section 139 of the Negotiable Instruments Act, 1881 and the Trial Court has rightly dismissed the complaint and thus, seeks to dismiss the present petition.

4. Heard the learned counsel on either side and perused the materials available on record.

5. Admittedly, the complainant/petitioner filed a complaint against the respondent/accused for the offence under section 138 of Negotiable Instruments Act. The complaint was filed on 10.10.2015. The



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learned Trial Judge dismissed the said complaint in C.C.No.14 of 2016 on 27.07.2022 on the ground that the complaint, being filed through Power Agent, no such power deed has been filed and there is no specific power given to the complainant to file criminal proceedings. But, in fact, the complainant had been granted a general power to conduct civil and criminal proceedings whenever necessary. Further, the learned Senior Counsel for the petitioner produced a copy of the Power of Attorney dated 23.02.2005, wherein, in Clause – 2, it is stated as follows:-

“ 2.To engage advocate for getting legal opinion and to initiate defend and to conduct all (Civil & Criminal) legal proceedings whenever necessary and sign all pleadings, written statement give evidence and to do everything in connection with the legal proceedings.”

Therefore, this Court is of the view that the complaint was not decided purely on merits, by the Trial Court. Therefore, *prima facie* on facts, the matter has to be reappraised and decided on merits.



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6. For the reasons stated above, leave is granted to petitioner to file an appeal against acquittal of the respondent / accused and the petition is allowed accordingly.

21.03.2023

Note:

The Registry is directed to number the Criminal Appeal, if it is otherwise in order.

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