



Crl.O.P.No.31700 of 2022

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V.SIVAGNANAM, J.

This Petition has been filed to grant leave to the petitioner to prefer an Appeal, against the judgment of acquittal passed by the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Alandur, in C.C.No.124 of 2018 dated 21.09.2022.

2. The petitioner herein is the complainant in C.C.No.124 of 2018 and he filed a complaint against the respondent under Section 138 of Negotiable Instruments Act before the Trial Court. The case of the petitioner is that, he paid a sum of Rs.12,00,000/- through on line transaction and also by way of cash, to the respondent, as an advance, towards a plot, to be purchased by him in a Hill View layout, Maraimalai Nagar, Kancheepuram District and subsequently, it came to know that the above plot is unapproved one. Hence, the petitioner requested the respondent to refund the advance amount of Rs.12,00,000/- and for the same, the respondent issued a cheque No.00177 dated 29.01.2018 for a sum



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of Rs.12,00,000/-, drawn on Karur Vysya Bank, Alandur Branch. The petitioner presented the cheque for collection and it was returned by his banker viz., ICICI Bank, Alandur Branch, with an endorsement " Account closed" on 02.02.2018. Therefore, after issuing statutory notice to the respondent, the petitioner filed the complainant, as stated above.

3. The learned counsel for the petitioner submitted that, the Trial Court, without appreciating the evidence adduced by the petitioner in proper perspective, has acquitted the accused/ respondent on the ground that he established his defence by rebutting the presumption under Section 139 and 118 of Negotiable Instruments Act. Therefore, leave may be granted to the petitioner to prefer the Appeal.

4. Heard the learned counsel for the petitioner and I have perused the materials on record.



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5. A perusal of the records reveals that, the petitioner filed a complaint against the respondent under Section 138 of Negotiable Instruments Act before the Trial Court. During Trial, the petitioner examined himself as PW1 and marked six documents as Ex.P1 to Ex.P6 and one Balamurugan, Proprietor of J.B.Properties was examined as DW1 and 3 documents were marked as Ex.D1 to Ex.D3. It is the contention of the petitioner that, he paid the advance amount of Rs.12,00,000/- through on line transaction and also by way of cash. However, the Trial Court found that the respondent/ accused had raised a probable defence, which creates a doubt about the existence of legally enforceable debt or liability and thereby, he rebutted the presumption under Section 139 and Section 118 of Negotiable Instruments Act. Therefore, the Trial Court concluded that the petitioner/ complainant had failed to prove that the cheque was issued in respect of a legally enforceable debt.

6. In such circumstances, this Court is of the view that the evidence adduced by the parties requires re-appreciation by this Court and the



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petitioner made out a prima facie case. Hence, this Court is inclined to grant leave to the petitioner to file the Criminal Appeal.

7. Accordingly, this Criminal Original Petition is allowed. Registry is directed to the number the Criminal Appeal, if it is otherwise in order.

12.01.2023

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