



WEB COPY

V. SIVAGNANAM, J.

This petition is filed to grant special leave to file appeal against the impugned judgment passed by the learned Judicial Magistrate No.II, Kanchipuram in STC.No.252 of 2017, dated 26.10.2022.

2. The learned counsel for the petitioner submitted that the accused is a Power Agent of the complainant. He admitted the transaction between the complainant and the accused for selling 54 flats belonging to the complainant. Admittedly, he sold 54 flats, but there is a dispute between them with regard to payment as agreed in the transaction. According to the complainant, the accused has to pay the balance amount Rs.21,08,400/- and for that amount, he paid two cheques for a sum of Rs.10 lakhs. When the cheques were presented for encashment, the same were dishonoured. Hence, he filed a complaint under section 138 of Negotiable Instruments Act. The trial court acquitted the accused on the ground that since the complainant has not proved beyond reasonable doubt that the cheque has been issued by the accused to the complainant towards payment of balance amount due. Further Ex.P.4 and P5 clearly establish that the accused received money (sale consideration) on behalf of the complainant and raised



presumption through those documents, the accused had not rebutted such presumption.

3. The learned counsel further contended that his evidence has to be re-appraised. The trial court, without properly appreciating the evidence on the side of the complainant, acquitted the accused. Thus, he prayed for grant of leave.

4. The learned counsel for the respondent, supporting the order of the trial court, further submitted that the cheque has been given as security while undertaking to sell 54 flats. He discharged the loan by paying the agreed amount. There is no balance to be paid by the accused to the complainant. The cheque given by the accused as security has been misused by the complainant. Hence, the trial Court rightly dismissed the complaint and acquitted the accused and seeks to dismiss the petition for granting leave.

5. Considered the submissions made on either side and perused the materials available on record.

6. Perusal of records reveal that the petitioner is a complainant in S.C.No.252 of 2017 and the respondent is an accused. The complainant filed



the complaint for the offence under section 138 of Negotiable Instruments Act for dishonour of cheques for the amount of Rs.10,00,000, dated 26.09.2016 and 29.09.2016 issued by the accused. The defence placed by the accused is that the cheque has been given as a security for the purpose of transaction between the complainant and the respondent for selling 54 flats belonging to the complainant. According to the complainant, there arose a dispute between the complainant and respondent and the balance amount of Rs.21,08,400/- has to be paid by the accused. For that purpose, the disputed cheque for Rs.10 lakhs has been given. It is denied by the accused that the entire amount has been paid. On perusal of records and cross examination, it is found that the evidence has to be re-appraised whether the complainant rebutted the presumption in support of the complaint under section 139 of Negotiable Instruments Act properly. Hence, there is a prima facie case on fact for grant of leave against the acquittal order. Hence, leave is granted.

15.02.2023

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