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Crl.O.P.No.26414 of 2023 in Crl.A.SR.No.55450 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2023

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.26414 of 2023 in
Crl.A.SR.No.55450 of 2023

A.Kulanthaivelu

... Petitioner

Vs.

Somasundari

... Respondent

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to grant Special Leave to file the appeal as against the order of acquittal passed in C.C.No.920 of 2017, dated 11.09.2023 on the file of the Metropolitan Magistrate, V Fast Track Court, Saidapet, Chennai.

For Petitioner : Mr.A.Kumanaraja

ORDER

The petitioner as a complainant filed a private complaint against the respondent for offence under Section 138 of the Negotiable Instruments Act, 1881 in C.C.No.920 of 2017 before the learned Metropolitan Magistrate, Fast Track Court-V, Saidapet, Chennai (Trial Court). The Trial Court, by judgment, dated 11.09.2023 dismissed the complaint against which the present Criminal Original Petition for grating leave.

2.The case of the petitioner is that the respondent who was working as



a Nurse in Thoothukudi district took loan for a sum of Rs.75,000/- from the petitioner during the month of April 2015 for family expense. In discharge of the same, the respondent issued three cheques each for Rs.25,000/-, dated 04.10.2016 and the same were presented, got dishonored. Following the statutory provisions, the petitioner filed the above said complaint, during trial, he examined himself as PW1 and marked 12 documents as Exs.P1 to P12. After completion of trial, the trial Court dismissed the complaint, by judgment, dated 11.09.2023 as stated above.

3.The learned counsel for the petitioner submitted that the Trial Court failed to look into the fact that the respondent not disputed the signature in the cheques and thereby, the statutory presumption starring against the respondent under Sections 118 and 139 of the Negotiable Instruments Act, 1881. He further submitted that the respondent did not get into the box and not given any explanation, only for the reason that there is no mention about the date of the loan borrowed and when and where the cheques were handed over, are not stated in the notice as well as in the complaint and proof affidavit which has been given undue importance by the Trial Court. The



Trial Court further gave a finding that the respondent and one Ganesan were working together in the Government Hospital, Thoothukudi, at that time, they got acquainted and Rs.75,000/- was taken loan from the said Ganesan and it was repaid and, thereafter, the said Ganesan met with an accident and later died, taking advantage of these three cheques, which was not returned by the said Ganesan, the petitioner who is none other than the brother-in-law of Ganesan, had misused the same, is not proper. Hence, prays for setting aside the judgment of the Trial Court.

4.Considering the submissions and on perusal of the materials such as statutory notice, reply notice, proof affidavit, complaint and cross examination, it is the specific case of the respondent that the respondent and Ganesan were working together in the Government Hospital, Thoothukudi and later, Ganesan died due to accident. The petitioner admits that Ganesan is his brother-in-law. For a specific question that on whose instruction, the cheques were presented, the petitioner admits that the cheques were presented after Ganesan's son met the respondent who asked the cheques to be presented. He further admits that for 30 years, the petitioner is residing



Crl.O.P.No.26414 of 2023 in Crl.A.SR.No.55450 of 2023

in Chennai. Admittedly, in this case, the respondent is employed in Thuthookudi as a staff Nurse, had no occasion to meet the petitioner. It is to be noted that there is no reason given when and on which date the respondent had approached the petitioner and taken loan amount and handed the cheques. From the cross examination, it is seen that the respondent had probablized her defence. The Trial Court considered the same in paragraphs (f) and (g), gave reasons and dismissed the complaint.

5.In view of the above, this Court finds no reason to interfere with the judgment of the trial Court, dated 11.09.2023 and the same is hereby affirmed. Accordingly, this Criminal Original Petition stands dismissed and Crl.A.SR.No.55450 of 2023 stands rejected.

06.12.2023

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No

vv2

To

Page No.4 of 6



Crl.O.P.No.26414 of 2023 in Crl.A.SR.No.55450 of 2023

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The Metropolitan Magistrate,
Fast Track Court No.V,
Saidapet, Chennai.



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Crl.O.P.No.26414 of 2023 in Crl.A.SR.No.55450 of 2023

M.NIRMAL KUMAR, J.

vv2

Crl.O.P.No.26414 of 2023 in
Crl.A.SR.No.55450 of 2023

06.12.2023