



Crl.O.P.No.31558 of 2022
in
Crl.A.SR.No.59954 of 2022

V. SIVAGNANAM, J.

This petition is filed to grant leave to file appeal against the judgment acquitting the respondent in C.C.No.390 of 2018, dated 30.09.2022 passed by the Judicial Magistrate No.I, Pollachi, Coimbatore District.

2. Though notice served on the respondent and his name is being printed in the cause list, there is no representation for her either in person or through counsel.

3. The learned counsel for the petitioner submitted that the petitioner filed a complaint against the respondent in C.C.No.390 of 2018 on the file of Judicial Magistrate I, Pollachi, Coimbatore for the offence under section 138 of Negotiable Instruments Act. According to the complainant, the respondent/accused borrowed a sum of Rs. 6 lakhs as hand loan on 11.09.2011 and in order to repay that amount, he gave a cheque bearing



No.503252 dated 09.03.2013 of Bank of Baroda, Kinathukadavu Branch for 6 lakhs. When the complainant presented the cheque for encashment, it was returned as account closed on 13.3.2013. After receiving legal notice, he filed a complaint before the trial court, where, the accused took the defence that the disputed cheque was not given by her and signature found in the cheque is not of hers and disputed the same, but the accused did not appear before the Court and did not depose denying the issuance of cheque and borrowal of amount from the complainant. Instead of examining herself, she examined the Bank Manager as DW1. He deposed that the account has been blocked and the signature found in Ex.P.1 and the bank opening application signature in Ex.D.1 are different. The accused took the defence that at the time of attending condolence, her sister took two blank cheques and had missed one of the cheques and the same was misused by the complainant. This theory is improbable. But the trial court accepted that theory and dismissed the complaint and acquitted the accused. There is a prima facie perverse in appreciation of factual finding by the trial court. Hence, he seeks to grant leave.



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4. Considered the submissions of the learned counsel for the petitioner and perused the materials available on record.

5. Perusal of records would reveal that the petitioner is the complainant and the respondent is the accused in C.C.No.390 of 2018 on the file of Judicial Magistrate I, Pollachi. The complainant filed a complaint under section 138 of Negotiable Instruments Act against the accused for dishonour of cheque Ex.P.1 for a sum of Rs. 6 lakhs. According to the complainant, the accused borrowed a hand loan of Rs.6 lakhs on 11.09.2011 and in order to repay that amount, the disputed cheque has been given by the accused during the trial. The accused has not come forward to depose about the denial of borrowal of loan, issuance of cheque and also not disputed the signature in the cheque by entering appearance before the Court. Even though, there may be rebuttal of presumption in favour of the complainant under section 139 of Negotiable Instruments Act, without letting evidence, once she propounded the theory that one of her two cheques were misplaced and misplaced cheque was misused by the complainant, it is her burden to appear before the court and depose that



how the cheque was misplaced, how it comes to the hands of the complainant and other things. The trial court, in its judgment, in paragraph 16(1) rebuts the defence taken by the accused, but the defence is not probablised by the accused by appearing before the court and she should be subjected for cross examination whether the cheque has been issued and loan has been obtained from the complainant. Under these circumstances, prima facie, the fact and evidence has to be re-apprised and it is a fit case for grant of leave to file the appeal against acquittal. Hence, leave is granted.

15.02.2023

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Note: The Registry is directed to number the appeal, if it is, otherwise, in order.



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