



Crl.O.P.No.2992 of 2024 in Crl.A.No.1369 of 2024

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M.NIRMAL KUMAR, J.

The petitioner as a complainant filed a private complaint against the respondent for offence under Section 138 of the Negotiable Instruments Act, 1881 in S.T.C.No.44 of 2017 before the learned Judicial Magistrate, Fast Track Court, Attur, Salem (Trial Court). The trial Court *vide* judgment, dated 27.03.2018 dismissed the complaint acquitting the respondent. Challenging the same, the petitioner preferred an appeal before the learned II Additional District Judge, Salem in C.A.No.104 of 2018 (lower appellate Court). In view of the directions of the Full Bench of this Court in the case of “***S.Ganapathy Vs. N.Senthilvel*** reported in ***(2016) 4 CTC 119***” in Crl.R.C.Nos.494 & 536 of 2019, dated 03.02.2021, the case has been transferred to the file of this Court. Hence, the present petition is filed for granting leave.

2.The learned counsel for the petitioner submitted that the appreciation of the evidence by the trial Court as well as its finding is perverse and liable to be set aside. The respondent admitted the filling of cheque, issuance of cheque and also signing, hence, Section 139 of the Negotiable Instruments



Act, 1881 comes into play and it is for the respondent to probablize his defence. The case of the respondent by way of cross examination of the petitioner, PW2 and PW3/bank officials is that the cheque was given to the wife of the petitioner and not to the petitioner. Further, a cheque was given much earlier which was presented by the petitioner in the State Bank of India account and later, it was represented to Pallavan Grama Bank. The return memo of Pallavan Grama Bank had been produced. Further, the return memo of Indian Bank account is from the service branch and not from the branch where the respondent is maintaining the account. Likewise, the statement of account does not reflect the deduction of charges for dishonour of the cheque. As per Section 146 of the Negotiable Instruments Act, 1881, the bank's slip is a *prima facie* evidence of certain facts, but in this case, the facts of depositing the cheque, dishonour of the cheque for funds insufficient have been proved by the bankers. Hence, the trial Court finding is merely on technicality and not on facts of the case.

3.Finding reason and force in the submission of the learned counsel for the petitioner, this Court grants leave.



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