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CrI.O.P.No.9994 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE **M.DHANDAPANI**

CrI.O.P.No.9994 of 2024
in CrI.A.SR.No.21769 of 2024

Nirmal Chand

... Petitioner

Vs.

Sivagamasundari

... Respondent

Prayer in CrI.OP.No.9994 of 2024: Criminal Original Petition filed under Section 378 (4) of Cr.P.C., to grant special leave to appeal against the impugned order of acquittal dated 29.01.2004 in S.T.C.No.354 of 2022 on the file of the Judicial Magistrate No.II, Chidambaram and take up the appeal on the file of this Court.

Prayer in CrI.A.No.SR21769 of 2024: Criminal Appeal has been filed under Sections 397 and 401 Cr.P.C. to set aside the order of acquittal dated 29.01.2024 passed by the learned Judicial Magistrate-II, Chidambaram and reverse the same and allow the appeal.

For Petitioner : Mr.V.Vikma

ORDER

This petition has been filed seeking to grant special leave to appeal against the impugned order of acquittal dated 29.01.2004 in S.T.C.No.354 of



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2022 on the file of the Judicial Magistrate No.II, Chidambaram and take up the appeal on the file of this Court.

2. The petitioner is the complainant and the respondent is the accused.

The petitioner is running a Nirmal Chand Bankers. The accused is the daughter in law of one Lakshmi who was the house maid servant of the complainant. The respondent has approached the petitioner and requested to lent a sum of Rs.70,000/- as hand loan for medical expenses of her child. The petitioner lent a sum of Rs.70,000/- on 10.06.2022 to the respondent, for which, the respondent issued a cheque bearing No.322744 dated 12.07.2022. The petitioner has presented the said cheque before the Banker and the same was returned as Funds Insufficient vide memo datd 13.07.2022. Therefore, the petitioner issued a legal notice on 25.07.2022 to the respondent and that the said notice was received by the accused. Therefore, the petitioner filed a private complaint against the respondent for offence under Section 138 of Negotiable Instrument Act, before the learned Magistrate No.II, Chidambaram. After completing the legal formalities, the same was taken on file in S.T.C.No.354 of 2022. On the side of the petitioner, he himself has examined as PW1 and 5 documents viz., Ex.P.1 to Ex.P.5 were marked. On the side of the accused, she was examined as



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DW1 and three witnesses were examined as Ex.D1 to Ex.D3.

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3. The learned Magistrate, after trial, found the petitioner not guilty for offence under Section 138 of Negotiable Instruments Act and dismissed the same. Aggrieved against the said acquittal judgment dated 29.01.2024 in STC. No.354 of 2022, the petitioner has preferred this present the petition before this Court.

4. The learned counsel appearing for the petitioner submitted that admittedly, the respondent's mother in law was working 40 years in the petitioners house. In view the same, the petitioner has settled a free site to the respondents mother in law. Subsequently, the respondent has entered into sale agreement with the petitioner for alienating the property to an extent of 700 sq. ft. and received a sum of Rs.3,00,000/- as advance amount. However, the respondent was not interested to sell the property and hence, a cancellation deed was executed and the same was marked as Ex.R1, in which, the respondent has returned the advance amount. Thereafter, the respondent has borrowed a sum of Rs.70,000/- from the petitioner and the said amount was not repaid. All the facts are not properly adjudicated by the trial Court. Further, the learned



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counsel submitted that while acquitting the respondent, the trial Court has failed to consider that the respondent has admitted that the signature found in the cheque/Ex.P1 belongs to the respondent and that the cheque in question was dishonoured for want of funds.

5. Heard the learned counsel for the petitioner and perused the materials available on record.

6. The facts of the case are not in dispute. Admittedly, the respondent's mother in law was working in the petitioner house for 30 years. It is equally undisputed fact that the respondent entered into sale agreement with the petitioner and the petitioner has paid a sum of Rs.3 lakhs as advance. Subsequently, the respondent has borrowed a sum of Rs.70,000/- for medical expenses, for which, she has issued a cheque to the petitioner and the said amount has not been repaid. Hence, the complaint.

7. Initially, the petitioner has stated that the respondent has borrowed a sum of Rs.70,000/- and issued post-dated cheque. However, during the cross examination, before the trial Court, PW1 has admitted that the respondent has



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issued two cheques. One cheque was issued for a sum of Rs.3,00,000/- and another cheque was issued for Rs.70,000/- for encashment. Initially, he has not disclosed the cheque which was issued by the respondent for a sum of Rs.3,00,000/- either in the complaint or in the examination. The petitioner has not properly explained the said contrary statements during cross examination.

8. A careful perusal of entire evidence, this Court does not find that the petitioner has rebutted the statutory presumption under Section 139 of NI Act and he has not proved that the respondent has issued a cheque for legally enforceable debt. Therefore, in the absence of any such proof, the respondent is not liable to pay the amount to the petitioner. In view of the above, this Court does not find any perversity in the findings of the trial Court and finds no merit in the petition.

9. In the result, this Criminal Original petition is dismissed. Consequently, Criminal appeal is also rejected at the SR stage itself.

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Index:Yes/No
Speaking/Non speaking order
rli

To

The Judicial Magistrate II, Chidambaram.

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in Crl.A.SR.No.21769 of 2024

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