



WEB COPY



Crl.O.P.No.20288 of 2024
in Crl.A.SR.No.27365 of 2024

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M. NIRMAL KUMAR, J.

This petition has been filed to grant leave to prefer an appeal and to set aside the judgment dated 07.03.2024 passed by the learned XXI Additional Sessions Judge, Allikulam Court Complex Chennai – 600 003 in C.A.No.428 of 2023 and to restore the judgment dated 01.07.2023 in C.C.No.6872 of 2016 passed by the learned Metropolitan Magistrate Fast Track Court – 1, Egmore, Allikulam Court Complex, Chennai – 600 003.

2. The contention of the petitioner is that the respondent had borrowed a sum of Rs.1,50,000/- on 13.01.2012 for the purpose of carrying on business of empty bottles to the reputed companies and executed a promissory note to repay the said amount together with accrued interest at 24% p.a. on demand. When the petitioner insisted for repayment of the amount borrowed together with interest amount, the respondent issued two cheques dated 20.09.2013 and 08.10.2013 for a sum of Rs.1,00,000/- each to discharge the said liability. However, the said cheques, upon deposits were returned by the bankers with an endorsement “Funds insufficient”. Therefore, the petitioner caused a legal notice to the respondent on 30.10.2013, which was received by the respondent on 02.11.2013, but no



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reply was sent by the respondent. Therefore, the petitioner was constrained to file the complaint under Section 138 of N.I.Act.

3. At the time of trial, on the side of the petitioner, P.W.1 was examined and Exs.P-1 to P-6 were marked. No oral or documentary evidence was marked on the side of the respondent. On the basis of oral and documentary evidence, the court below found the respondent has not denied that the cheque is does not belongs to her and her signature found in it and held that the respondent is liable to be punished under Section 138 of N.I.Act. Aggrieved by the same, the respondent preferred an appeal in C.A.No.428 of 2023 and the learned XXI Additional Sessions Judge, Chennai allowed the said appeal vide order dated 07.03.2024 by holding that the cheques were not issued towards a legally enforceable debt as stated by the petitioner instead a doubt had arisen as to whether the cheque would have been issued for the arrears of rent as security to the petitioner and acquitted the respondent. Against which, the present petition has been filed to grant leave to the petitioner to prefer an appeal.

4. Admittedly, the Appellate Court allowed the appeal preferred by the respondent stating that the petitioner had not proved the source of income and further the petitioner and the respondent are the landlord and tenant.



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In such circumstances, the cheque issued, cannot be considered to discharge the liability, but the Trial Court appreciated the facts that the respondent has not denied the signature found in the cheque. However, without properly appreciating the above, the Appellate court had erroneously acquitted the respondent.

5. Finding reason and force in the petitioner's submission, this Court is inclined to grant leave. Accordingly, leave is granted.

23.08.2024

Note: Registry is directed to number the Criminal Appeal, if it is otherwise in order.
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