Crl.O.P. No. 20170 of 2024
in
Crl.A. SR No. 41737 of 2024

M. NIRMALKUMAR,J.

The petitioner as the complainant had filed a private complaint against the respondent for the offence under Section 138 of Negotiable Instrument Act, 1881 and the same was taken on file as STC No. 327 of 2023 by the learned XXVI Metropolitan Magistrate, Egmore, Chennai. On completion of trial, the learned Magistrate, by order dated 19.06.2024, dismissed the complaint and the above criminal original petition has been filed by the complainant seeking leave to prefer an appeal as against the said order dated 19.06.2024.

2. The case of the petitioner is that he had known the respondent/accused through his father. The petitioner's father and the respondent were close friends. The respondent had approached the petitioner seeking urgent financial assistance, either by the petitioner or anybody known to him. The petitioner had taken the respondent to a

financier (examined as P.W.2) and the petitioner had received the money from the financier and handed over the same to the respondent/accused. For the purpose of this loan, the petitioner had given his property documents as security to the financier. In discharge of the said liability, the respondent had issued a cheque for Rs.8 lakhs. However the cheque, when presented, got dishonoured resulting in issuance of notice. The respondent received the notice, but did not reply. Thereafter, the complaint came to be filed.

3. During the trial, the petitioner had examined himself as P.W.1, the financier as P.W.2 and marked Exs.P1 to P4. The respondent did not probabilise his defence by denying either the issuance of cheque or the signature in the cheque. Hence, statutory presumption under Sections 118 and 139 comes into play. The respondent could not give any plausible explanation to show that he had discharged the liability. He took a technical plea that the amount was handed over by the financier and instead of the financier, the petitioner had used the cheque and filed a case. In any event, the financier has been examined as P.W.2 and his case is not that the

respondent had discharged his liability under the cheque and that the petitioner had used a stale cheque to file a case.

4. Admittedly, the liability under the cheque Ex.P1 had not been discharged, not probabilised by any materials. The Trial Court came to the conclusion that though there is no dispute that the respondent had taken a loan, there is discrepancy as to whether the complainant had taken the loan amount from the financier and handed over the same to the respondent or the respondent had taken the loan from the financier directly. Therefore, in the absence of any conclusive evidence from whom the respondent had actually availed the loan, the Trial Court was of the view that there was no legally enforceable debt as claimed by the complainant and giving the benefit of doubt to the respondent, dismissed the complaint, which in the opinion of this Court is unsustainable. Hence, leave granted and the petition is ordered as prayed for.

21.08.2024

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