

1. Heard learned Advocate for the Applicant and learned APP for Respondent No.2-State.
2. Inspite of notice issued through Court and private notice served on Respondent No.1-accused, Respondent No.1-accused has not appeared.
3. Learned Advocate for the Applicant has taken me through the findings of the trial Court. The trial Court is aware about presumption under section 139 of the NI Act. The cheque was issued towards discharge of liability arising out of friendly loan, however, the trial Court has doubted friendly loan for the reason that friendly loan has to be proved by independent document and the complainant has not proved, how he has raised money. There are certain documents filed relating to the Income Tax department, however, the trial court has

found some fault in these documents. Recently, it is held that there is no need to show how the money is raised. So arguable case is made out.

4. About service of notice also, the findings are not clear. On one hand the trial Court has not believed the evidence adduced on behalf of Respondent No.1 (by examining banker and by filing private complaint filed by him against third person). Whereas on the other hand, the trial Court held that the addresses given in the notice and addresses claimed by the accused are different but they are not sufficient to discard compliance of section 138(b) of NI Act. It seems that there is certain confusion in mind of the trial Court. Therefore, the case for grant of leave is made out. Hence, special leave to prefer an appeal is granted.

5. Appeal be admitted.

6. Call for Record and Proceedings.

7. Issue notice to Respondent No.1-accused, returnable on **19th April 2023**.

8. Action be taken under section 390 of the Code of Criminal Procedure and learned Magistrate is at liberty to release Respondent-accused on furnishing necessary bail.

[S. M. MODAK, J.]