



Crl.O.P.No.22244 of 2023

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WEB CO **M.NIRMAL KUMAR, J.**

The petitioner/complainant in S.T.C.No.367 of 2017 filed this petition to grant leave to file an appeal against the order of acquittal dated 08.08.2023 passed by the learned Judicial Magistrate No.II, Chidambaram.

2.The primary contention of the petitioner is that the petitioner and the respondent are known to each other. The respondent/accused borrowed a sum of Rs.1,50,000/- on 19.11.2014 and assured to repay the same with interest at 12% per annum and thereafter, the respondent neither paid the interest nor repaid the principal. Lastly the accused in discharge of his liability had given a cheque bearing No.220683 dated 03.07.2017 drawn on State Bank of India, Sirkkali Branch. When the cheque was presented, the same got dishonoured. Statutory notice/Ex.P.4 dated 01.08.2017 was issued which was received by the respondent on 03.08.2017 and the acknowledgment card was marked as Ex.P5. The Trial Court found that the respondent had not denied the signature in the cheque and also handing over of cheque, thereby the respondent had admitted the liability, but on the



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contrary it had taken a stand that the date of borrowal was shown in the sworn affidavit as 19.04.2014 whereas in the legal notice, the borrowal date has been struck out from 19.04.2014 and over-written as 19.11.2014 which was found in the complaint also and this has been made only to gain limitation. Hence, the trial Court finding that the cheque issued in discharge of the liability to be time barred acquitted the respondent.

3.The contention of the learned counsel for the petitioner is that the Trial Court having come to the conclusion that the respondent had not denied the liability, issuance of cheque and his signature, it would attract presumption under Sections 118 and 139 of Negotiable Instruments Act.. The correction which is said to have been made as per the Trial Court is not proper and the Trial Court ought to have seen Ex.P4/legal notice and Ex.P.5/acknowledgment card which confirms the date on which the loan has been given. He would further submit that to prove that correction has been done is an after thought, the respondent ought to have produced the copy of the legal notice which was served. But this has not been done in this case. Further, there is no reason given by the Trial Court with regard to when was



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the correction done, who has done the correction, whether the correction was done prior to filing of the case or when the document was in the legal custody. Hence, he prayed that the finding of the trial Court is perverse and it is liable to be set aside.

4.Finding reason in the submission of the learned counsel for the petitioner, this Court is inclined to grant leave.

5.The Registry is directed to number the appeal and post for admission, if it is otherwise in order.

04.10.2023

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