



CrI.O.P.No.22739 of 2023 in CrI.A.SR.No.48901 of 2023

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M.NIRMAL KUMAR., J.

The petitioner as a complainant filed a private complaint under Section 138 of the Negotiable Instruments Act, 1881 in C.C.No.1380 of 2017 before the learned Judicial Magistrate, Fast Track Court at Magistrate Level-II, Coimbatore (trial Court). The trial Court, by judgment, dated 22.08.2023 dismissed the complaint acquitting the all the accused respondents. Aggrieved over the same, the present petition for leave and criminal appeal.

2.The contention of the petitioner is that the findings of the trial Court is improper and perverse, the trial Court had not given any reason as to how the cheque signed by the respondents had come in possession of the petitioner. On the other hand, the trial Court gives its own finding that mere production of cheque in Court will not prove the fact that the cheque was issued for discharge of liability and further for a successful prosecution, the petitioner/complainant must allege and prove the cheque was drawn and executed by the respondents/accused. In the absence of proof of lending the



loan to the accused, presumption cannot be drawn against the petitioner/complainant which is against the statutory presumption under Sections 118 and 139 of the Negotiable Instruments Act, 1881. He further submitted that in the cross examination by the respondents/accused, the specific case is that the cheque has been given to one Venkatachalam and this cheque has come in possession of the petitioner/complainant and the case has been lodged. There is nothing on record to show that the transaction between Venkatachalam and the respondents settled and what steps they took to retrieve the cheque handed over to the said Venkatachalam is not known. Neither Venkatachalam examined as witness in the box nor the respondents got into the box to give explanation.

3.Finding reason and force in the submissions made by the learned counsel for the petitioner, this Court is inclined to grant leave. Accordingly, leave is granted. Registry is directed to number the Criminal Appeal, if it is otherwise in order and the post the same for Admission on 18.10.2023.

12.10.2023

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