



WEB COPY



CrI.O.P.No.22243 of 2023

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in
CrI.A.SR.No.46827 of 2023

M.NIRMAL KUMAR, J.

This Criminal Original Petition has been filed seeking to grant Special Leave to prosecute the above appeal before this Court against an order of acquittal dated 28.07.2023 made in S.T.C.No.3293 of 2016 on the file of the Judicial Magistrate Court No.II, Pollachi.

2. The petitioner/complainant filed a private complaint under Section 138 of Negotiable Instruments Act (NI Act) in S.T.C.No.3293 of 2016 against the respondent. The learned Judicial Magistrate No.II, Pollachi by judgment dated 28.07.2023 acquitted the respondent, against which, the present petition.

3. Learned counsel for petitioner submitted that the trial Court judgment is perverse. He further submitted that the grounds given by the trial Court in acquitting the respondent is not proper. The first ground is that the handwritings in the cheque and the signature are different. The second ground is that notice has not been signed by the Advocate and the third ground is that the petitioner herein has been a witness to a sale deed



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document of the respondent, who availed loan from Repco Bank. In such circumstances, the reason for the petitioner giving further loan to the respondent has not been proved.

4. The contention of the petitioner is that it is a settled preposition that the difference in signature and handwritings alone is not a ground to acquit a person. Further, there is no prescribed format of notice under Section 138 of N.I. Act. The only requirement is that the drawer of the cheque has to be informed about the dishonour of the cheque. In this case, there is no dispute with regard to handing of cheque and the information with regard to the dishonour of the cheque is also known to the respondent. As far as the third ground is concerned, there is no embargo that once a person has availed loan, he is not entitled for availing further loan.

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

04.10.2023

Note: Registry is directed to number the Criminal Appeal, if it is otherwise in order and the post the same for Admission.
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