



Crl.O.P.No.23083 of 2023 in Crl.A.SR.No.50139 of 2023

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M.NIRMAL KUMAR., J.

The petitioner, a Chit and Finance Company Private Limited filed a private complaint against the respondent for offence under Section 138 of the Negotiable Instruments Act, 1881 in C.C.No.2098 of 2013 before the learned IIIrd Fast Track Metropolitan Magistrate, Saidapet, Chennai (trial Court). The trial Court, by judgment, dated 21.07.2023 dismissed the complaint acquitting the respondent. Aggrieved over the same, the present petition for leave and appeal.

2.The contention of the petitioner is that the respondent is due to a sum of Rs.8,37,930/-, for which, the cheque in question issued by him to the petitioner. The trial Court gave its finding that the respondent earlier subscribed to three more chits other than the chit for which the cheque in question issued. These three more chits marked as Exs.D3 to D6 which were discontinued by the respondent and an amount of Rs.3,79,510/- is available. The trial Court failed to consider the fact that the respondent not denied the signature in the cheque (Ex.P2) and issuance of the same. The statement of account (Ex.P8) for a sum of Rs.8,37,930/- produced which has



not been seriously disputed.

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3.The trial Court calculation in paragraph 6(iii) of the judgment that all the due credits and adjustments are made, the respondent is only liable to pay a sum of Rs.8,240/- is not supported with any documents. Further, the trial Court held that the security cheque of the respondent deposited and request made by the respondent to the petitioner to adjust and withheld the amount is also not supported with evidence. He further submitted that in the event of any adjustment as per Chit Act, there might be written consent by the subscriber to the chit, thereafter only any adjustment can be made. In this case, there is no written consent. In view of the same, the finding of the trial Court is not proper.

4.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 10.11.2023.

13.10.2023

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