



WEB COPY



Crl.O.P.No.23623 of 2023

Crl.O.P.No.23623 of 2023
in
Crl.A.SR.No.35813 of 2023

M. NIRMAL KUMAR, J.

This petition is filed seeking to grant special leave to the petitioner to prosecute the above appeal before this Court against the order of acquittal dated 24.05.2023 made in S.T.C.No.4181 of 2017 on the file of the learned Judicial Magistrate, Thiruvottiyur.

2. The petitioner/complainant filed a private complaint under Section 138 of Negotiable Instruments Act against the respondent in S.T.C.No.4181 of 2017. The Trial Court by judgment dated 24.05.2023, dismissed the complaint and acquitted the respondent.

3. The primary contention of the petitioner is that the receipt of sum of Rs.60,00,000/- in the year 2013 by the respondent/accused is not seriously disputed. The admitted case of the petitioner is that he gave loan of Rs.50,00,000/- on 12.07.2013 and Rs.10,00,000/- on 23.07.2013, of which, the respondent paid back Rs.20,00,000/- on 10.04.2015 and Rs.5,00,000/- on 11.04.2015 and another Rs.5,00,000/- on 04.07.2015. In total, he paid a sum of



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Rs.30,00,000/-. As regards Rs.30,00,000/-, it was agreed by the respondent herein to make petitioner's son as partner in a Bakery business. The respondent and the petitioner's son are classmates. Hence, this arrangement was made. Contrary to the same, the respondent neither made the petitioner's son as partner nor return back Rs.30,00,000/-. Thereafter, the petitioner lodged a complaint with the Vepery Police Station and petition enquiry was conducted.

4. Further, learned counsel for petitioner submitted that the respondent filed an Anticipatory Bail petition before this Court in Crl.O.P.No.16492 of 2017 in which it was recorded that the respondent had given undertaking that he will return the amount to the petitioner. Recording the same, the petition was disposed of with liberty to the respondent police to reopen the petition enquiry, in the event of the respondent not complying with the undertaking given by him and proceed further. This order has been marked as Ex.P6. He further submitted that the respondent examined himself as defence witness/DW1 and marked Exs.D1 and D2, which had been confronted with respondent, who admits about the earlier business understanding and subsequently not fulfilling the same. According to the petitioner, the cheque was given in discharge of the liability for a sum of Rs.30,00,000/- and the petitioner brought in both oral and documentary evidence to prove the same. The Trial Court failed to refer to



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any of these piece of evidence but rendered a judgment of acquittal, against which the present petition.

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

30.10.2023

Note: Registry is directed to number the Criminal Appeal, if it is otherwise in order.
rsi



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