Crl.O.P.No.23368 of 2023 in
Crl.A.SR.No.50963 of 2023

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.564 of 2019 before the learned Judicial Magistrate No.II, Pollachi (trial Court). The trial Court, by judgment, dated 13.09.2023 dismissed the complaint acquitting the respondent/accused. Aggrieved over the same, the present leave petition and criminal appeal.

2.The contention of the petitioner is that the respondent/accused not conducted effective cross examination by putting forth question giving explanation for the cheque in the hands of the petitioner and further to show discharge of liability for the cheque amount. The only question put during cross examination is that on 13.10.2016, the loan amount of Rs.4,00,000/- (Rupees four lakh only) was received by the respondent/accused from the house of the petitioner/complainant. Thereafter, the case was adjourned for continuation of the cross examination to 31.07.2023 and thereafter, the respondent/accused neither took any steps nor filed any petition to recall or

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to conduct further cross examination. The trial Court failed to consider the statutory presumption under Sections 119 and 139 of the Negotiable Instruments Act, 1881 wherein the accused not denied his signature in the cheque and also brought any material to show that the liability discharged. On the other hand, on its own given a conclusion with regard to percentage of the interest and repayment particulars.

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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