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Crl.O.P.No.25566 of 2023

Crl.O.P.No.25566 of 2023
in
Crl.A.SR.No.50166 of 2023

M. NIRMAL KUMAR, J.

This petition is filed seeking to grant special leave to the petitioner to file an appeal against the order in C.C.No.264 of 2019 dated 29.05.2023 passed by the learned Judicial Magistrate, FTC, Magistrate Level, Alandur.

2.The petitioner/complainant filed a private complaint under Section 138 of the Negotiable Instruments Act against the respondent in C.C. No.264 of 2019. The Trial Court, by judgment dated 29.05.2023, dismissed the complaint and acquitted the respondent, against which, the present leave and appeal.

3.The contention of the learned counsel for petitioner is that the respondent had taken a loan of Rs.3,00,000/- on 31.08.2016 and Rs.8,00,000/- on 19.05.2017 for her urgent needs, which is not seriously disputed. Thereafter, in discharge of the liability, the respondent issued two cheques for Rs.1,00,000/- and Rs.12,50,000/- on 01.06.2019. Both the cheques were presented and returned for the reason 'Funds Insufficient'. Thereafter, statutory notice has been caused. The respondent received the statutory notice but not sent any reply, thereafter, the case has been filed.



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4.During trial, the petitioner examined himself as PW1 and marked 8 documents as Exs.P1 to P8. On the side of the respondent, Ex.D1 marked.

5.The Lower Court dismissed the complaint on two grounds. The first ground is that the petitioner suppressed yet another loan given to the respondent on 24.09.2016 and this loan document had been marked as Ex.D1 and second ground is that the respondent availed loan from the petitioner's brother and the petitioner's brother filed a case under Section 138 of NI Act against the respondent in C.C.No.265 of 2019. This case has been settled, which is admitted by the petitioner. According to the petitioner, the loan dated 24.09.2016 had been settled, for that reason no action has been taken and this fact is not required to decided this case. Further, the respondent drawn the attention of the petitioner with regard to C.C.No.265 of 2019, which the petitioner admits about the knowledge, other than that there is no other document or any tangible material to show that the cheques given in these two cases were given as security. In such circumstances, the Trial Court relying heavily on these two grounds and dismissing the complaint is not proper.



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

10.11.2023

Note: Registry is directed to number the Criminal Appeal, if it is otherwise in order and post the same for Admission on 21.11.2023.
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