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CrI.O.P.No.23614 of 2023 in CrI.A.SR.No.50995 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.10.2023

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.O.P.No.23614 of 2023 in  
CrI.A.SR.No.50995 of 2023

R.Ganesh Prabhu

... Petitioner

Vs.

D.Thanaraj

... Respondent

PRAYER: Criminal Original Petition is filed under Section 378(4) of the Code of Criminal Procedure, to grant leave to file appeal against the judgment of acquittal dated 18.08.2023 in S.T.C.No.8 of 2022 on the Special Metropolitan Magistrate -X Court of Small Causes, Chennai.

For Petitioner : Mr.M.Vignesh

### ORDER

The petitioner as a complainant filed a private complaint for offence under Section 138 of the Negotiable Instruments Act, 1881 against the respondent in S.T.C.No.8 of 2022 before the learned Special Metropolitan Magistrate/X Court of Small Causes, Chennai (trial Court). The learned Magistrate, by judgment, dated 18.08.2023 dismissed the complaint acquitting the respondent. Aggrieved over the same, the present leave petition and appeal.



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2.The contention of the petitioner is that the petitioner and the respondent are known to each other for quite sometime. For business requirement, Rs.6,00,000/- received by the respondent from the petitioner. In discharge of the same, the respondent issued three cheques of Rs.2,00,000/- each, dated 18.12.2018. When the same presented, the cheques dishonoured. After following the statutory provisions, the complaint filed before the trial Court. During trial, the petitioner examined himself as PW1 and marked documents as Exs.P1 to P4. On the side of the defence, no witness examined, but the Income Tax Returns of the petitioner for the year 2017-2018 and 2018-2019 marked as Ex.D1 and copy of C.S.R.No.1014 of 2017 marked as Ex.D2. The trial Court failed to consider the fact that the cheques Ex.P1 series relates to the account of the respondent, the signature in the cheques not denied. Hence, initial presumption contemplated under Section 139 of the Negotiable Instruments Act, 1881 has to be raised by the Court in favour of the complainant. The trial Court coming to conclusion the respondent has established a probable defence, causing doubt about the existence of legally enforceable debt or liability is not proper. In support of his



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contention, the petitioner produced the copy of the complaint and deposition of the petitioner/PW1.

3.It is seen that the civil dispute between the petitioner's father and the respondent in C.S.No.665 of 2017 is not denied. The respondent owns a piece of land opposite to the petitioner's home, there was some dispute with regard to the same. Further, in the Income Tax Returns (Ex.D1) of the petitioner, there is no reference to the loan given and Ex.D2 is the CSR for a dispute between the petitioner's father and the respondent. The C.S.R is dated 05.11.2017, but the contention of the petitioner is that the loan was given to the respondent during June 2018 which cast serious doubt, defies normal conduct. Added to it, the admission is that the petitioner has given loan for no reason. The petitioner denies the writings in three cheques are in variance. The trial Court on perusal had held that the three cheques writings and ink differs. The petitioner feigns ignorance about the pendency of the civil suit between the petitioner's father Rajkumar and respondent in C.S.No.665 of 2017, more so when the petitioner is an Advocate. The petitioner has not come with true facts, for the reasons best known, he has been



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sceptical in his evidence.

4.The petitioner in his evidence stated that for what reason the loan was given, he is not aware and just for business need, the loan amount was given. The respondent as an Advocate such answer gives doubt on the veracity of the petitioner's contention. From the judgment of the trial Court, it is seen that the trial Court analysed the evidence of PW1 as well as Exs.D1 & D2 and acquitted the accused. The reasoning of the trial Court in dismissing the complaint acquitting the respondent is proper.

5.Hence, this Court does not find any merits in this Criminal Original Petition to grant leave. Accordingly, this Criminal Original Petition stands dismissed and Crl.A.SR.No.50995 of 2023 is rejected.

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Index: Yes/No  
Internet: Yes/No  
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The Special Metropolitan Magistrate/X Court of Small Causes,  
Chennai.



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M.NIRMAL KUMAR, J.  
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