



WEB COPY



Crl.O.P.No.26497 of 2023

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in
Crl.A.SR.No.54105 of 2023

M. NIRMAL KUMAR, J.

This petition has been filed seeking to grant special leave to the petitioner to prefer the above criminal appeal.

2.The petitioner as complainant has filed a private complaint under section 138 of the Negotiable Instruments Act against the respondent in STC No.465 of 2017. The Trial Court by judgment dated 30.08.2023, dismissed the complaint, acquitted the respondent, against which the present appeal.

3.The contention of the petitioner is that the Lower Court dismissed the complaint on its own motion against the evidence available in the case. Though in para 13 of the judgment it observed that during initial questioning under Section 251 Cr.P.C. and later under Section 313 Cr.P.C., the respondent not denied the signature in the cheque. The explanation seems to be that the respondent handed over the signed cheque to one Bharath, Advocate with regard to the civil suit and this cheque landed in the hands of the petitioner. Using the cheque, a complaint has been filed. He further submitted that in this



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case, except these explanation, there is nothing in the cross examination with regard to the said Advocate Bharath. Further, the said Advocate not examined to probabilise the defence of the respondent. He further submitted that the Lower court referring to a portion of the cross examination that the petitioner and the respondent are not relatives, further, respondent's son Ravi alone is known to the petitioner, in such circumstances, how the respondent could have handed over the cheque, is also not proper.

4.The specific case of the petitioner is that during December, 2016 for family expenses, the respondent borrowed Rs.3,50,000/- from the petitioner. In discharge of the said liability, the cheque was issued, which was clearly mentioned in the statutory notice. After receipt of the statutory notice, no reply has been given and further from the cross examination the respondent also not probabilised his defence.

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

23.11.2023

Note: Registry is directed to number the



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Criminal Appeal, if it is otherwise in order.

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