



WEB COPY



Crl.O.P.No.25199 of 2023

Crl.O.P.No.25199 of 2023
in
Crl.A.SR.No.54851 of 2023

M. NIRMAL KUMAR, J.

This petition is filed seeking to grant leave to the petitioner for filing the above Criminal Appeal.

2.The petitioner had lodged a private complaint against the respondent for offence under Section 138 of the Negotiable Instruments Act. The respondent for his urgent needs taken loan from the petitioner for a sum of Rs.5,00,000/-. In discharge of the said liability he issued a cheque/Ex.P1, which got dishonoured, later statutory notice was issued. Though the respondent received the same, he had not responded to the statutory notice. Thereafter, following the statutory provisions complaint has been filed.

3.The contention of the learned counsel for petitioner is that the Trial Court dismissed the complaint and acquitted the respondent primarily on two grounds. First ground is that the cheque was returned on three occasions, i.e., on 20.10.2018, 08.11.2018 and 12.11.2018, all the three occasions it was returned as account closed. Such being the case, there is no necessity for the



petitioner to deposit the cheque again and again. Further, there was an inordinate delay in return of the cheque, i.e., on 04.01.2019 and hence, limitation of statutory notice issued on 12.01.2019 is beyond the statutory period. The second ground is that the bank return memo, found to be issued from Axis Bank, Tiruppur Branch and not from Dharapuram Branch.

4. Further contention of the petitioner is that finding of the trial Court on these two grounds are perverse and to be set aside for the reason that petitioner had examined himself as PW1 and produced cheque, return memo and also issuance of statutory notice. Further, the respondent had not responded to the statutory notice, which had been proved. He examined PW2/Branch Manager, Axis Bank, who in his evidence had clearly stated that the return of cheque was only on 04.01.2019 and the bank memo denotes the same. Further referring to the evidence of PW2 submits that this witness had clearly given explanation that though the cheque had been returned on three occasions, as regards the return of the cheque, the intimation to the complainant was given only on 04.01.2019. Further submitted that as per Section 146 of the Negotiable Instruments Act the banker's slip is the *prima-facie* evidence. This fact has not been considered by the Trial Court. Though the respondent had cross examined PW2 at length, PW2 confirmed the date of presentation, return of cheque and intimation to the



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petitioner. That being the case, the Trial Court giving its own interpretation much against Section 146 of NI Act, is not proper. Further, in this case the petitioner had not denied issuance of cheque, signature available in the cheque and not probalised his defence.

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

20.11.2023

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