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Crl.O.P.No.25856 of 2023
in Crl.A.SR.No.55811 of 2023

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M.NIRMAL KUMAR, J.

The petitioner as complainant filed a private complaint against the respondent under Section 138 of Negotiable Instruments Act in C.C.No.231 of 2017. The learned Judicial Magistrate, Fast Track Court No.I, Coimbatore by judgment dated 20.09.2023 dismissed the complaint and acquitted the respondent.

2.The petitioner Company filed a private complaint under Section 138 of Negotiable Instruments Act against the respondent. The respondent is one of the Directors of M/s.Sivaram Yarns Private Limited. There was a business transaction between the petitioner and the respondent. In the said business transaction, a sum of Rs.1,05,48,597/- was due from M/s.Sivaram Yarns Private Limited, 9-93, Bendapudi Village, Thondangi Mandal, East Godavari District, Andhra Pradesh. The other Directors of the Company are Mr.Sri Vattikutti Venkata Lakshmi Narasiha Rao, Mr.Medisetti Venkata Ratthaiah, Smt.Medisetti Siva Nagendramma and Smt.Medisetti Phani



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Priya, who is the respondent herein. All the Directors stood as Guarantors for the liability of the Company and the respondent herein had given a personal cheque for a sum of Rs.75 lakhs admitting the liability. When the cheque was presented for encashment, the same was dishonoured. Thereafter, statutory notice issued for which reply was received which was not acceptable. Hence, complaint was lodged.

3.The contention of the learned counsel for the petitioner is that during the trial, the petitioner examined his Manager cum Accountant after giving due Board's authorization dated 15.06.2016, which was marked as Ex.P7. He was examined as P.W.1 and Ex.P1 to Ex.P8 were marked through him. Thereafter, he was cross examined with regard to the transactions which was confirmed in his evidence. He would submit that the defence taken by the respondent is that a personal guarantee was executed and there has been deposit of title deeds for a property in Andhra Pradesh valued around Rs.3 Crores which was marked as Ex.D1. Further, D.W.1 in his evidence admits about the business transaction, thereafter returning of cotton fibre to the tune of Rs.25 lakhs and giving credit to the same,



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M/s.Sivaram Yarns Private Limited is due to the sum of Rs.80 lakhs. Their defence is that since the property worth Rs.3 Crores has been given and mortgaged, the liability would not arise. Further, the Company also paid electricity charges and labour charge, for payment of electricity charges Ex.D2 has been marked and no document produced with regard to payment of labour charges on behalf of the petitioner. This being so, the Lower Court giving a finding that P.W.1 is unable to confirm whether the respondent is the Managing Director or Director of M/s.Sivaram Yarns Export Private Limited and further with regard to referring to mortgage deed/Ex.D1 and finding that the cheque has been given only as security is not proper. Admittedly in this case, after executing the mortgage deed nothing more had happened and further, no iota of material produced to show that the amount of Rs.80 lakhs has been discharged. When D.W.1 admits the liability of Rs.80 lakhs to be paid to the petitioner, executing the mortgage deed would not absolve the liability. He further submitted that the Lower Court failed to consider these facts and rendered the judgment of acquittal.

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4.Finding reason in the submission of the learned counsel for the petitioner, this Court is inclined to grant leave. Accordingly, leave granted.

5.The Registry is directed to number the appeal and post for admission, if it is otherwise in order.

24.11.2023

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