



WEB COPY



Crl.O.P.No.25868 of 2023

Crl.O.P.No.25868 of 2023
in
Crl.A.SR.No.55821 of 2023

M. NIRMAL KUMAR, J.

This petition is filed seeking to grant leave to the petitioner to file an appeal against the order dated 20.07.2023 passed in S.T.C.No.102 of 2020 by the learned Judicial Magistrate, FTC, Magistrate Level, Tiruchengode.

2.The petitioner/complainant has filed a private complaint under Section 138 of the Negotiable Instruments Act against the respondent in S.T.C.No.102 of 2020. The Trial Court, by judgment dated 20.07.2023, 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 petitioner and the respondent are known to each other from their college days and they are friends. For the urgent business needs, the respondent borrowed a sum of Rs.8,00,000/- on 18.12.2019 and thereafter, in discharge of the said liability, he issued a cheque, which was presented and got dishonoured. Thereafter, statutory notice was issued. The statutory notice was returned for the reason 'Door Locked'. Thereafter, a complaint has been filed.



4.The petitioner examined himself as PW1 and marked Exs.P1 to P5. On

the side of the respondent, he examined himself as DW1 and marked Ex.D1.

5.The stand taken by the respondent is that statutory notice/Ex.P4 not taken to the correct address of the respondent and not properly served, further, the cheque which was given in the year 2013 had been filled up and misused by the petitioner and shown as that of the cheque was issued in the year 2019 and a case has been registered. The respondent earlier received some money, which he repaid and the cheque has been misused by the petitioner.

6.Learned counsel for the petitioner submitted that the Trial Court dismissed the complaint on three grounds. The first ground is notice was not sent to the correct address of the respondent. The second grounds is loan amount given to the respondent not proved and the third ground is the issuance of cheque is in discharge of the loan is also not proved. Learned counsel further submitted that this is on wrong premise. The respondent examined himself as DW1 admits that the signature found in the cheque is that of the respondent. He gave an explanation that cheque was given in the year 2013 and the same was filled up by the petitioner in the year 2019, for which there is no evidence. Further, DW1 admits that the address found in the statutory notice is that of his



Crl.O.P.No.25868 of 2023

factory address. But, later he denies the same and not produced any documents to show that the factory address is elsewhere. When the issuance of cheque and signature is not disputed, the respondent ought to have proved that the loan has been discharged. In this case, the respondent not probalised his defence to show that the loan amount has been discharged in any manner. The Lower Court proceeded on a wrong premise and dismissed the complaint.

7.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.
rsi



WEB COPY



Crl.O.P.No.25868 of 2023

M. NIRMAL KUMAR, J.

rsi

Crl.O.P.No.25868 of 2023
in
Crl.A.SR.No.55821 of 2023

10.11.2023