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Crl.O.P.No.28132 of 2023

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in
Crl.A.SR.No.58379 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 had filed a private complaint under Section 138 of the Negotiable Instruments Act in STC No.1307 of 2018 against the respondent. The Trial Court, by judgment dated 22.09.2023, dismissed the complaint and acquitted the respondent, against which, the present leave and appeal.

3.The contention of the petitioner is that the defence taken by the respondent is the cheque has been signed and handed over to the petitioner's father and not to the petitioner. His further defence is that he is a tenant in the shop belonging to the petitioner's father and was paying rent for a sum of Rs.3,000/- and there was some dispute with regard to the tenancy. Later civil suit has been filed, which was withdrawn by him. At that time he gave these cheques as security.

4.The further contention of the petitioner is, the Trial Court finding is, there is variance of ink in the writing and signature, further, the petitioner



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lending a sum of Rs.8.5 lakhs as loan without collecting any other document becomes questionable and the loan was only for a period of one month. If that being so, the cheque has been deposited three months after the loan, which causes suspicion. The learned counsel submitted that the respondent examined himself as DW1 but the evidence is otherwise. He confirms the issuance of the cheque, the only stand taken is, security cheques have been given to the petitioner's father. The Trial Court looked the case beyond evidence, forgetting that statutory presumption is staring at him. There is no material to show the respondent has probalised his defence any manner and entitled for acquittal.

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

19.12.2023

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

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