



WEB COPY



Crl.O.P.No.27301 of 2023

Crl.O.P.No.27301 of 2023
in
Crl.A.SR.No.59647 of 2023

M. NIRMAL KUMAR, J.

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

2.The petitioner as complainant has filed a private complaint under Section 138 of the Negotiable Instruments Act against the respondents in C.C.No.141 of 2021. The Trial Court by judgment dated 20.10.2023 dismissed the complaint and acquitted the respondents, against which, the present leave petition.

3.The contention of the petitioner is that the petitioner prior to filing of the private complaint issued statutory notice. The respondent, who is a proprietorship concern in the name of Gajalakshmi Traders represented by its Proprietor, second respondent, issued cheques during July 2021 in discharge of the loan liability. On the instructions, during September 2021, the three cheques for a sum of Rs.5,00,000/-, Rs.3,00,000/- and Rs.2,00,000/- were presented and got dishonoured on 07.09.2021 and 09.09.2021. Thereafter, statutory notice issued. Notice was served to the respondent but failed to respond to the notice,



CrI.O.P.No.27301 of 2023

thereafter, complaint filed. During trial, the petitioner examined himself as PW1 and Bank Managers as PW2 and PW3 and marked Exhibits P1 to P8 in support of his contention.

4.The learned counsel for petitioner submitted that the cheques were returned for the reason “Account closed”. The defence taken by the respondent is that she used to sign only in Tamil and in the cheque, the signature found in English. She admits that she also signs in English but with the aid of her husband. Her husband passed away on 08.02.2021, i.e., much before the issuance of the cheque. In view of the same, the signature found in the cheque is not of the respondent. The Trial Court looking at the summoning order and 313 questioning found that the signature of the respondent found in the documents are in Tamil and hence, dismissed the complaint.

5.According to the petitioner, this might not be proper. The respondent might have deceived the Court for taking a stand that she does not know to sign in English. The Lower Court ought to have either call the respondent to write her signature in English or forward the document after getting specimen signature of the respondent along with the disputed cheques to the handwriting expert. On the other hand, DW1's categorical admission is that the cheques



CrI.O.P.No.27301 of 2023

belongs to her and she used to sign at the request of her husband and the fact that her husband doing business in the name of Gajalakshmi Traders and she is the Proprietor, is not denied. In view of the same, the Lower Court dismissing the complaint and acquitting the respondents is not proper.

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

07.12.2023

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



WEB COPY



Crl.O.P.No.27301 of 2023

M. NIRMAL KUMAR, J.

rsi

Crl.O.P.No.27301 of 2023
in
Crl.A.SR.No.59647 of 2023

07.12.2023