



WEB COPY



Crl.O.P.Nos.28078, 28080, 28081
and 28083 of 2023
in Crl.A.SR.Nos.60675, 60674, 60676
and 60617 of 2023

Crl.O.P.Nos.28078, 28080, 28081
and 28083 of 2023

in

Crl.A.SR.Nos.60675, 60674, 60676
and 60617 of 2023

M.NIRMAL KUMAR, J.

The petitioner as complainant filed private complaints against the respondent under Section 138 of Negotiable Instruments Act in S.T.C.No.2503/2011, S.T.C.No.2890/2011, C.C.No.437/2010 and C.C.No.391/2010 before the learned Judicial Magistrate No.II, Erode. The Trial Court dismissed the complaints by judgment dated 30.08.2023 and acquitted the respondent. Against which, the petitioner filed the present petitions seeking leave to file an appeals.

2.The contention of the petitioner is that the business transaction between the petitioner and the respondent is not in dispute and during the course of business transaction, 23 cheques were given to the tune of Rs.8,11,820/-, for which these cases were filed. All the statutory conditions were complied with, signature in the cheques has not been disputed and the



WEB COPY



CrI.O.P.Nos.28078, 28080, 28081
and 28083 of 2023
in CrI.A.SR.Nos.60675, 60674, 60676
and 60617 of 2023

only defence taken by the respondent is that the liability with regard to the cheques were discharged by the respondent by paying the amount to one Tamilarasan who is the employee of the petitioner. The said Tamilarasan was not examined, except for this explanation there is no contemporary material to show that the liability has been discharged. Further, the Lower Court referred to civil suit in O.S.No.53 of 2013 pending before the Additional Principal Sessions Court, in which the claim is Rs.7,12,774/-, on the contrary, the complaint under Section 138 NI Act is for Rs.8,11,820/- and hence, there is a doubt in the liability. Further, referred to Ex.D10 and Ex.D11 which is the complaint lodged by the respondent to the Superintendent of Police on 07.05.2010 wherein C.S.R.No.72 of 2010 assigned, thereafter only the complaint was lodged on 23.09.2010.

3.The learned counsel for the petitioner submitted that though the respondent produced Ex.D5/acknowledgment card, he had not produced the reply denying the liability or making any payment to Tamilarasan. He would submit that comparing the civil suit and complaint under Section 138



WEB COPY



Crl.O.P.Nos.28078, 28080, 28081
and 28083 of 2023
in Crl.A.SR.Nos.60675, 60674, 60676
and 60617 of 2023

NI Act is not proper and also the police complaint which was earlier lodged.

He would further submit that if the respondent had materials, he could have pursued the Police complaint and taken it to logical conclusion, on the other hand in the present complaint, projected as though the liability has been discharged. Further, the Lower Court on the initial examination under Section 251 Cr.P.C. and explanation under Section 313(1) Cr.P.C. found that by the respondent's explanation, he has probalilized his defence, which is not proper.

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 appeals and post for admission, if it is otherwise in order.

21.12.2023

cse



Crl.O.P.Nos.28078, 28080, 28081
and 28083 of 2023
in Crl.A.SR.Nos.60675, 60674, 60676
and 60617 of 2023

M.NIRMAL KUMAR, J.

cse

Crl.O.P.Nos.28078, 28080, 28081
and 28083 of 2023
in
Crl.A.SR.Nos.60675, 60674, 60676
and 60617 of 2023

21.12.2023