



WEB COPY



Crl.O.P.No.6183 of 2024
in Crl.A.SR.No.62 of 2024

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M.NIRMAL KUMAR, J.

The petitioner as complainant had filed a private complaint against the respondents for offence under Section 138 of the Negotiable Instruments Act ('N.I. Act') in C.C.No.38 of 2019. The trial Court, by judgment dated 04.09.2023, dismissed the complaint acquitting the respondents, against which, the present revision has been filed.

2.The contention of the learned counsel for petitioner is that the petitioner supplied Gada clothes to the respondents covered under invoice. The goods were received by the respondents and initially they were making regular payments and gained confidence of the petitioner. The petitioner thereafter supplied Gada clothes on 90 days credit basis. The clothes were processed by the respondents and they sold the same in the market but failed to discharge the liability towards the petitioner's supplying clothes. After several request, the respondents issued six cheques in discharge of their



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liability for the amount of Rs.55,72,780/-. When the cheques were presented it got dishonoured, thereafter following the statutory procedure the complaint was lodged. Thereafter the respondents appeared and taken a stand that the cheques were not issued by the partnership firm while discharge of the liability.

3.He further submitted that the first respondent is the partnership firm and others are partners as projected by the respondents to the petitioner. The respondents 2 to 4 were negotiating for the business dealings with the petitioner. But belatedly sent a reply on 05.02.2019. By the time the petitioner already filed a complaint on 01.02.2019. The trial Court not considering the same had given a finding that the reply notice was not considered. Only respondents 2 and 3/A2 and A3 are the partners of the first respondent firm, A4 and A5 as per the complaint are not partners. For that reason only the High Court quashed the case against A4 in Crl.O.P.No.27859 of 2019.



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4.He further submitted that in this case it is not in dispute that A5/Piyush Paul Gupta signed the cheque and issued the cheque. Further the learned counsel for the petitioner referred to the cheque issued by the respondents, wherein the cheque has been issued by the partnership firm and signed by Piyush Paul Gupta. During the cross examination, only technical grounds taken that he is not a partner but he signed the cheque. The partners of the firm are from the same family. The trial Court ought to have found the deceitful manner in which the cheque issued and proceeded against the respondents, if cheating is made out against them under Section 420 of IPC. On the contrary, dismissing the complaint is not proper.

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

19.03.2024

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



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