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Crl.O.P.No.311 of 2024
in Crl.A.SR.No.442 of 2024

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M.NIRMAL KUMAR, J.

The petitioner as complainant filed a private complaint against the respondent for the offence under Section 138 of Negotiable Instruments Act in S.T.C.No.594 of 2019 before the learned Judicial Magistrate No.I, Gobichettipalayam. The Trial Court by judgment dated 04.12.2023 dismissed the complaint and acquitted the respondent. Against which, the petitioner filed the present petition seeking leave to file an appeal.

2.The contention of the petitioner is that the respondent is known to him and for his urgent needs, he borrowed a sum of Rs.3,00,000/- from the petitioner which the respondent promised to repay and in discharge of the liability, he issued a cheque/Ex.P1. When the cheque was presented for encashment, the same got dishonoured. Thereafter, following the statutory provisions, complaint was filed.



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3.The learned counsel for the petitioner submitted that the respondent sent a reply notice with false allegations which was also disclosed in the complaint. The defence taken by the respondent is that the respondent borrowed a sum of Rs.60,00,000/- from one Kondappan and at that time, he issued two cheques and a promissory note, which were misused by the petitioner and a private complaint was filed. The respondent further stated that he filed a civil suit in O.S.No.65 of 2019 seeking cancellation of the sale deed executed by the respondent in favour of Kondappan and others vide Document No.3187/2018 dated 12.01.2018. There is an animosity between the respondent and the said Kondappan and hence, handing over of cheque in the year 2019 for the loan borrowed would not arise and hence, his contention that the cheque which was given as security was misused by the petitioner which has been accepted by the Trial Court is not sustainable for the reason that the written statement in O.S.No.65 of 2019 in which the said Kondappan explained that the sale deed amount is for the purchase of the property which has been handed over to the respondent. Therefore the sale transaction has got nothing to do with the cheque. He further submitted that with regard to the promissory note, a civil suit has been filed by one



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Nagarajan in O.S.No.247 of 2019 against the respondent which was marked as Ex.D2 which would clearly show that the said Nagarajan has got separate and independent transaction. Thus the respondent trying to distort the facts and project a case as though cheque was given as security has not been properly appreciated. Further, the respondent has not denied the issuance of cheque and the signature found in it. His only explanation is the civil suit which is still pending in which the said Kondappan had given a detailed explanation by way of written statement. Thus, the Trial Court on wrong appreciation of facts had acquitted the respondent.

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

4.The Registry is directed to number the appeal and post for admission, if it is otherwise in order.

10.01.2024

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