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Crl.O.P.No.2656 of 2024
in Crl.A.SR.No.707 of 2024

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M.NIRMAL KUMAR, J.

The petitioner as complainant filed a private complaint against the respondent under Section 138 of Negotiable Instruments Act in S.T.C.No.23 of 2021 before the learned Judicial Magistrate, Fast Track Court [Magisterial Level], Tiruchengode. During the trial, the petitioner examined himself as P.W.1 and marked four documents. On the side of the respondent/accused, no witnesses examined and no documents marked. The Trial Court by judgment dated 16.08.2023 dismissed the complaint. Against which, the present petition and appeal is filed.

2.The contention of the learned counsel for the petitioner is that the respondent availed loan from the petitioner and in discharge of the liability, he issued a cheque for a sum of Rs.4,00,000/-. Though statutory notice was issued, no reply was received from the respondent. Thereafter, following the statutory provisions complaint was filed. Even in the initial questioning as well as in 313 Cr.P.C. questioning, the respondent has not taken a



CrI.O.P.No.2656 of 2024
in CrI.A.SR.No.707 of 2024

WEB COPY

defence as though he repaid the amount which is due to the petitioner. In such circumstances, the finding of the Trial Court that there is no liability is not proper. He would submit that the respondent took a stand that the petitioner has got no means to give a loan of Rs.4,00,000/- which the petitioner had disproved by referring to his bank details and as on the date of giving loan to the respondent, the petitioner is having Rs.3,86,906/- in his bank account. Further, the petitioner is also a subscriber to Margadarisi Chits. The finding of the Trial Court that the petitioner himself is a subscriber to Chit and making payment to Margadarisi Chits, he ought to have shown that he had received the amount through bank is not proper. He further submitted that the finding of the Trial Court that on bare perusal of the cheque, it is seen that the ink used in the signature and the writing in the cheque differs and hence, it is to be considered that the cheque was filled up is against the provisions under Section 20 of the Negotiable Instruments Act. The admitted case of the respondent is that he handed over the cheque to Sakthi Finance for some transaction which cheque was landed in the petitioner's hand and complaint was filed. In the absence of examination of



Crl.O.P.No.2656 of 2024
in Crl.A.SR.No.707 of 2024

WEB COPY

anyone from Sakthi Finance or the respondent giving plausible explanation both at the initial questioning or during 313 Cr.P.C. questioning which is against the statutory presumption under Section 139 of Negotiable Instruments Act, the Trial Court having found that the petitioner/complainant not proved the case under Section 139 of NI Act ought to have found whether the defence has been probabalized by the respondent but in this case, it is not so.

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.

12.02.2024

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WEB COPY



Crl.O.P.No.2656 of 2024
in Crl.A.SR.No.707 of 2024

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