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Crl.O.P.No.1149 of 2024
in Crl.A.SR.No.1962 of 2024

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M. NIRMAL KUMAR, J.

This petition has been filed to grant special leave to the petitioner to file an appeal against the acquittal of the respondent.

2.The petitioner as complainant had filed a private complaint against the respondent under Section 138 of the Negotiable Instruments Act in C.C.No.222 of 2019. The Trial Court by judgment dated 29.11.2023 dismissed the complaint acquitting the respondent, against which, the present appeal and leave petition has been filed.

3.The contention of the learned counsel for petitioner is that the trial Court had dismissed the complaint primarily on the ground that Ex.D1/Legal Notice dated 17.08.2019 had been issued after issuance of the statutory notice/Ex.P3 dated 12.12.2018 and the date of loan is almost on the same period, which fact had been suppressed and also filing of civil case based on the pro-note, not disclosed in the complaint.



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4.The further contention of the learned counsel is that the respondent, who is employed as Pharmacist in ESI, is known to the petitioner. The petitioner is a retired Supervisor in the Tamil Nadu Transport Corporation. He gave a hand loan to the respondent in the year 2016 on the promise that the respondent would repay within a short period. This short period kept on prolonging thereafter the petitioner demanded the respondent to pay the loan amount. In discharge of the same, the respondent issued cheque/Ex.P1 dated 15.11.2018 for a sum of Rs.4,00,000/-, which was presented, got dishonoured thereafter statutory notice/Ex.P3 was issued. The respondent is very much available in the address but refused to receive the statutory notice, thereafter a complaint has been lodged.

5.During trial, the petitioner examined himself as PW1 and marked Exs.P1 to P4. The respondent in her cross examination produced Ex.D1 which is for a pro-note. It is to be seen that Ex.D1 is served on the same address as of Ex.P3/statutory notice. But Ex.P3 was returned as refused but Ex.D1 was received by the respondent. The trial Court finding that the respondent had probalised his defence since Ex.P1 is for Rs.4,00,000/- and in Ex.P3, the loan amount was mentioned as Rs.4,00,000/- whereas in the subsequent notice/Ex.D1, the loan amount was mentioned as Rs.5,00,000/- which creates a doubt, is not proper.



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6.Learned counsel further submitted that no civil suit had been filed by the petitioner. Further the defence taken by the respondent that the petitioner through one Kannaiyan filed a civil suit in O.S.No.17 of 2021 on the file of Sub Court, Pollachi is also denied. The respondent though cross examined in this aspect he had not produced any documents to the effect. Further the case of the respondent is that the cheque book had been lost four years ago and she lodged a complaint to the jurisdictional police but no proof produced. Further the said Kannaiyan not examined as witness to probabalise the defence of the respondent. The trial Court not considering all these aspects giving a finding that Ex.P3 and Ex.D1 are for the same cause of action is not proper. Ex.P3 is a statutory notice with regard to the cheque. Ex.D1 is for pro-note for a different amount and hence, it cannot be construed that both cause of action are one and the same.

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

21.02.2024

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



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