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Crl.O.P.No.5653 of 2024
in Crl.A.Sr.No.101 of 2024

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M. NIRMAL KUMAR, J.

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

2.The petitioner as complainant had filed a private complaint under Section 138 of the Negotiable Instruments Act in C.C.No.151 of 2017. The Trial Court convicted the accused by judgment dated 30.05.2019 and sentenced to undergo one month S.I., and pay a fine of Rs.17,10,000/-, as compensation. Aggrieved by the same, the respondent has filed Criminal Appeal in C.A.No.56 of 2019 before the Principal District and Sessions Judge, Kancheepuram. The Sessions Judge by judgment dated 21.09.2023 allowed the appeal. Against the acquittal of the respondent, against which, the present appeal has been filed.

3.The contention of the petitioner is that the only primary ground on which the appeal is allowed is that Ex.P2 cheque is a photocopy. The petitioner prior to filing the petition issued a statutory notice Ex.P4 on



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receipt of statutory notice, the respondent had issued a reply Ex.P6, not denying the liability and raising some factual mistakes. Thereafter, complaint has been filed. The petitioner examined himself and the marked Ex.P.10Pro-not, Photo copy of the cheque-Ex.P2, statutory notice, reply notice and other documents.

4.The trial Court on the evidence had rightly convicted the respondent. Photocopy of the cheque was marked for the reason that the cheque got misplaced in the Court premises. It is the fact that at the time of filing the complaint, originals of all the documents namely the cheque, statutory notice, acknowledgement card, proof of service particulars, bank return statement are produced and thereafter, on verifying the originals with the photocopy retained in the Court and handed over the originals under the safe custody during sworn statement arise, the originals are verified.

5. In this case, admittedly the complaint has been filed along with sworn statement and at that point of time, originals are available and the originals of PW.1 found missing and therefore, the cheque has been marked Ex.P.2which was not objected by the respondent and the respondent had not questioned the same. In the appeal, the respondent had not raised any



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objection on the grounds of appeal, but the appellate Court had reversed the conviction allowed the appeal. For the reason that the trial Judge ought to have lodged the complaint with the vigilance department of the High Court with regard to missing of the cheque and not allowed photocopy to be marked which is not proper. In this case, the cheque details are found in the statutory notice, reply notice and DW.1, the Bank Manager confirms the issuance of the cheque Ex.P2 is supported to Ex.P1 pro-note.

6. In view of the same, the lower appellate Court if aggrieved on findings that the original missing might have taken administrative action for missing of the cheque and not turn around the conviction which is not proper.

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

14.03.2024

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