



WEB COPY



CrI.O.P.No.1401 of 2024
in CrI.A.SR.No.2705 of 2024

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M. NIRMAL KUMAR, J.

The petitioner as complainant had filed a private complaint against the respondent for offence under Section 138 of the Negotiable Instruments Act. The Trial Court, by judgment dated 04.12.2023 in C.C.No.118 of 2018 dismissed the complaint acquitting the respondent, against which, the present petition has been filed seeking leave of this Court to file an appeal.

2.The contention of the learned counsel for petitioner is that the petitioner examined himself as PW1 and marked six documents, of which, Statutory Notice is Ex.P5. Exs.P1 to P3 are three cheques for a sum of Rs.5,00,000/- each. In the statutory notice, there was a clear mentioning about the issuance of three cheques. Though notice has been taken to the known address of the respondent it was returned as 'Addressee not found'. Ex.P6 is the Postal returned cover. The Trial Court dismissed the Criminal Miscellaneous Petitions filed by the



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respondent finding that the respondent had been dragging on the proceedings by filing one petition or other and also for not cross examining PW1, filing a petition under Section 317 of Cr.P.C. and other miscellaneous petitions at random. Finally, the petition under Section 315 of Cr.P.C. filed by the respondent was also dismissed for the reason that the petition has been filed after 2 years 8 months, after the examination in chief of PW1 and 44 days after the case was reserved for judgment.

3.Further it was also recorded that at the time of questioning under Section 313 of Cr.P.C., the respondent admitted that he had received only a sum of Rs.1,30,000/- of which, he repaid Rs.1,10,000/- to the petitioner, which was found to be contradictory to the defence raised by the accused. Thus in all aspects, the defence of the accused was rejected but from paragraph 3 of Ex.P5 it was found that Ex.P5/Statutory notice could be a defective notice. Further in the complaint/pleading also there is no mention about the disputed amount and without pleading there cannot be evidence adduced.



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4.The learned counsel further submitted that the Lower Court wrongly construed that it is a civil suit and there must be pleadings for the evidence let in. In this case there are categorical references to the cheque issued by the respondent/accused in the statutory notice as well as in the complaint. Further in the evidence and proof affidavit, the three cheques/ Exs.P1 to P3 have been clearly spoken to. The respondent/accused had not denied his signature or issuance of the cheques. The appreciation of evidence by the Trial Court and acquittal of the respondent/accused, is not proper.

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

30.01.2024

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