



Crl.O.P.No.4721 of 2024
in Crl.A.SR.No.3469 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 in S.T.C.No.401 of 2017. The trial Court, by judgment dated 08.02.2021, convicted the respondent and sentenced him to undergo six months simple imprisonment and to pay the cheque amount of Rs.6,25,000/- as compensation. Aggrieved over the same, the respondent preferred an appeal before the Sessions Court in C.A.No.07 of 2021. The Sessions Court, by judgment dated 31.08.2023, allowed the appeal and acquitted the respondent, against which, the present revision and leave petition.

2.The contention of the learned counsel for petitioner is that the cheque is dated 07.12.2016, which was returned after presentation on 13.12.2016.

Thereafter, statutory notice issued on 20.12.2016, which was received by the



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respondent but neither he paid the cheque amount nor sent any reply.

Thereafter, the petitioner filed the complaint. During trial, the petitioner examined herself as PW1 and marked 4 documents. On the side of the defence, no witnesses examined and no documents marked. The trial Court found that the respondent not disputed the issuance of the cheque, signature found in the cheque and also debt. Since the respondent not probalised any defence, the trial Court convicted the respondent. During the appeal, a part settlement arrived between the petitioner and respondent on 13.02.2023 and a memo is also filed before the Sessions Court, which is recorded in the adjudication as annexed in page 70 of the typed set. Thereafter, there was a change of counsel and the subsequent counsel going behind the settlement, argued the case and the Lower Appellate Court in its judgment given a finding that the debt had become time barred and the cheque became stale. Referring to the evidence of complainant, failing to look into other attending circumstances and also the fact that cheque itself is dated 07.12.2016, which



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is not denied and now the defence has been taken taking a portion of the cross examination finding that part amount has been given on 26.12.2014 and another part amount given on 26.09.2016. In any event, the cheque is for recovery of legally enforceable debt. Hence, the finding of the Lower Appellate Court is not proper.

3.Finding that there is contra judgment, one convicting the respondent and another acquitting the respondent, this Court is inclined to grant leave. Accordingly, leave is granted.

13.03.2024

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



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