



Crl.O.P.No.3416 of 2024

**Crl.O.P.No.3416 of 2024**

**in**

**Crl.A.SR.No.6792 of 2024**

**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.70 of 2016. During trial, the petitioner had examined himself as PW1 and two other witnesses and marked Exs.P1 to P5. The respondent had examined himself as DW1 and another witness as DW2 and he marked Exs.D1 to D4. The Trial Court on the evidence of materials produced had convicted the respondent by judgment dated 11.07.2022 and sentenced him to undergo one year simple imprisonment and to pay the cheque amount of Rs.4,00,000/- as compensation. Aggrieved against the same, the respondent had filed an appeal before the Sessions Court in C.A.No.92 of 2022. The Sessions Judge by judgment dated 06.12.2023, had allowed the appeal setting aside the conviction of the respondent, against which, the present appeal has been filed by the complainant.



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2.The contention of the petitioner is that the trial Court had rightly appreciated the evidence of materials and convicted the petitioner but the Sessions Court without proper appreciation of evidence had allowed the appeal. The stand taken by the respondent is that the respondent had taken loan from one Krishnamoorthy and he handed over the cheque to the said Krishnamoorthy and not to the petitioner. It is an admitted case that in Ex.D4/Reply notice there is no such defence. Further in this case the said Krishnamoorthy not examined as witness to probabalise the defence of the respondent.

3.Admittedly, in this case it is a contra judgment. The Trial Court convicted the respondent, whereas the Lower Appellate court acquitted the respondent. In view of the above, this Court is inclined to grant leave. Accordingly, leave is granted.

16.02.2024

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



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