



WEB COPY



Crl.O.P.No.5058 of 2024
in Crl.A.No.1329 of 2023

Crl.O.P.No.5058 of 2024

in

Crl.A.No.1329 of 2023

M. NIRMAL KUMAR, J.

This petition has been filed to grant leave to the petitioner to prosecute the appeal filed 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 S.T.C.No.249 of 2018. The Trial Court by judgment dated 22.03.2019 dismissed the complaint and acquitted the respondent, against which, the present appeal has been filed.

3.The contention of the petitioner is that the petitioner had examined himself as PW.1 and the Bank Manager as PW.2 and marked Exhibits P1 to P10. The accused had examined 2 witnesses as DW.1 & DW.2 and marked 4 documents as Exhibits D1 to D4.

4. The contention of the learned counsel for the petitioner is that the trial Court in paragraphs 12 had come to the conclusion that the accused



Crl.O.P.No.5058 of 2024
in Crl.A.No.1329 of 2023

WEB COPY

has not denied the cheque or his signature found in it and hence statutory presumption under Sections 118 and 139 of N.I.Act proved. Whether the respondent had probalilise the defence now. The trial Court, after coming to such conclusion without proper reasoning, had accepted the contention of the respondent to probalilise the defence. The respondent is a Loco Pilot employed in Southern Railway. He had taken loan from the petitioner for a sum of Rs.2,00,000/-.

5. The defence taken by the respondent is that the respondent and DW.2 had entered into a construction agreement at that time there some dispute between the respondent and DW.2. He earlier issued a cheque as security, which is endorsed in Ex.D2 and this cheque misused by the petitioner. DW.2 not given any reason how the cheque reached the petitioner. Likewise, the other defence is that DW.1 whose incharge of the Loco Pilot's evidence is that on the date of issuance of cheque, the respondent was in duty at Coimbatore. Hence the cheque not handed over to the petitioner, on this ground the complaint was dismissed.

6. It is seen from the discussion, there is nothing to show that how the cheque handed over to Ganesan, reached petitioner. Further Erode and



Crl.O.P.No.5058 of 2024
in Crl.A.No.1329 of 2023

Coimbatore are not far away place.

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

14.03.2024

rpl



WEB COPY



Crl.O.P.No.5058 of 2024
in Crl.A.No.1329 of 2023

M. NIRMAL KUMAR, J.

rpl

Crl.O.P.No.5058 of 2024
in
Crl.A.No.1329 of 2023

14.03.2024