



Crl.O.P.No.6079 of 2024
in Crl.A.SR.No.12337 of 2024

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M. NIRMAL KUMAR, J.

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

2.The petitioner as complainant had filed a private complainant against the respondent for offence under Section 138 of the Negotiable Instruments Act in S.T.C.No.399 of 2023. The trial Court, by judgment dated 30.01.2024, dismissed the complaint acquitting the respondent, against which the present appeal and leave petition.

3.The contention of the learned counsel for petitioner is that the petitioner examined himself as PW1 and marked Exs.P1 to P13. On the side of the defence, no witnesses examined and no documents marked. The only ground on which the trial Court dismissed the complaint is that after dishonour of the cheque, statutory notice was issued to the accused on 02.04.2021. The respondent received the same on 09.04.2021. Hence, the



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cause of action arose on 25.04.2021. But the complaint was filed on 21.04.2021. Hence, no cause of action arose. Further, referring to the judgment in the case of *Yogendra Pratap Singh vs. Savitri Pandey* reported in (2014) 10 SCC 713 and in *Gajanand Burange vs. Laxmi Chand Goyal* in Criminal Appeal No.1229 of 2022 in SLP (Crl.) No.1415 of 2019 dated 12.08.2022, the trial Court dismissed the complaint.

4.He further submitted that in paragraph 15 of the judgment the trial Court came to a conclusion that there is passing of consideration between the complainant and accused and after admitting the receipt of Rs.6,00,000/- as per Ex.P13, the accused could not estop from his stand in the present case. Hence, the defence of the accused that there is no passing of the consideration is liable to be rejected. Having come to such conclusion on merits the trial Court ought to have convicted the respondent but on the other hand, on mere technicality dismissed the appeal, which is not proper. The Apex Court in its judgment had clearly held that a complaint filed before the expiry of 15 days from the date of receipt of notice, the complainant cannot be permitted to



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present the very same complaint at any later stage. The only remedy is to file a fresh complaint and if the same could not be filed within the time prescribed under Section 142(b) of N.I. Act, his recourse is to seek the benefit of the proviso, satisfying the Court of sufficient cause for the delay in instituting the complaint. In such circumstances, the trial Court ought to have returned the complaint for the complainant to represent the same.

5.Further submitted that the respondent in its reply notice/Ex.P12 had given certain dates and mode of repayment as defence. But in this case thereafter no explanation given, no witnesses examined and proof of payment produced in the trial Court. He further submitted that the Hon'ble Apex Court in another instant clearly held that once the recipient of statutory notice denies his liability or gives its explanation which really proves that the drawer of the cheque has got no inclination to pay the complainant. In such circumstances waiting for 15 days would not arise.



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6.Finding reason and force in the submission of the learned counsel for petitioner, this Court is inclined to grant leave. Accordingly, leave is granted.

18.03.2024

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

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