



WEB COPY



Crl.O.P.No.5497 of 2024
in Crl.A.Sr.No.10711 of 2024

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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 C.C.No.530 of 2016. The Trial Court by judgment dated 12.01.2024 dismissed the complaint and acquitted the respondent, against which, the present appeal has been filed.

3.The learned counsel for the petitioner submitted that the petitioner had examined himself as PW.1 and marked Exhibits P1 to P8. On the side of the defence, the respondent was examined as DW.1 and marked 2 documents as Exhibits D1 & D2.

4. The contention of the petitioner is that the trial Court had primarily dismissed the complaint for the reason that the statutory notice



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Ex.P4, the cheque number has been wrongly mentioned as 000739 instead of 000032. This statutory notice dated 19.03.2015 was received by the respondent on 20.03.2015. He has not sent any reply seeking clarification. In this aspect, the petitioner has filed proof affidavit. In the proof affidavit, the petitioner has clearly stated the mistake committed and thereafter, marked exhibits. The petitioner had also fairly marked reply notice dated 04.04.2015 filed by the petitioner [Ex.P6] and rejoinder in the reply has been marked Ex.P7. After filing of the complaint, the reply notice has been sent. It is only after thought explanation. He further taken a stand on the date of issue of the cheque, the petitioner was at Marudhamalai, for that he had marked Ex.D.2. The trial Court further in the cross examination of the complainant, there is no question put in this regard, questioning the statutory notice or the rejoinder, but gives an explanation by examining himself as DW.1. But in the cross examination, the respondent admits his signature found in the pro-note as well as in the cheque and even according to the petitioner, the respondent had only taken loan of Rs.2,00,000/- which he has repaid. There is no mode of payment, how it is made and what are the dates. Hence it cannot be construed as probalalise the defence.



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5. The learned counsel for the petitioner further submitted that mere mistake in the cheque numbers, by itself will not vitiate the complaints, if there is a proper demand for the cheque amount made in the statutory notice.

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

14.03.2024

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