



Crl.O.P.No.5703 of 2023
in Crl.A.SR.No.11605 of 2023

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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 respondents.

2.The petitioner as complainant had filed a private complaint against the respondents under Section 138 of the Negotiable Instruments Act in C.C.No.4586 of 2017. The Trial Court by judgment dated 05.01.2023 dismissed the complaint acquitting the respondents, against which, the present appeal and leave petition has been filed. The petitioner examined himself as PW1 and marked 9 documents as Exs.P1 to P9.

3.The contention of the learned counsel for petitioner is that the respondents had received Rs.33,00,000/- and Rs.7,00,000/- as loan from the petitioner. For Rs.33,00,000/-, the respondents paid Rs.8,00,000/- and for the balance Rs.25,00,000/-, they issued a cheque, which is the subject matter of the case. As regards Rs.7,00,000/-, they paid Rs.5,00,000/- and balance Rs.2,00,000/- has to be paid, for that the petitioner is taking separate steps.



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4.His further contention is that the respondents admit in their reply notice/Ex.P9 about the receipt of loan of Rs.33,00,000/- but they are silent about Rs.7,00,000/- loan and for this they had given a tabulation listing 17 instance, of which, 5 instance are by RTGS totalling to Rs.13,00,000/-, which the complainant himself admits. Out of this Rs.13,00,000/-, Rs.8,00,000/- pertains to the cheque in question and Rs.5,00,000/- for the another loan of Rs.7,00,000/-. Hence, for Rs.25,00,000/- due, the cheque has been produced. The trial Court had taken into consideration the 11th instance of cash payment said to have made in various dates, which is not supported by any evidence and no materials or piece of paper had been produced by the respondents to show that they paid this amount by cash. But the trial Court had given its own interpretation in paragraph (x) of the judgment as though repayment had been made by the respondents to an extent of Rs.13,00,000/- and further they have rebutted the presumption.

5.Learned counsel submitted that going by the trial Court's interpretation then also the respondents are due and they have not discharged the entire liability. Hence, finding of the trial Court is wrong and perverse. Further the trial Court had given wrong interpretation that the blank signed cheque had been handed over by the respondents and the petitioner had filled up the same, which is against Section 20 of the Negotiable Instruments Act.



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

23.02.2024

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



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