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Crl.O.P.No.7566 of 2023
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M. NIRMAL KUMAR, J.

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

2.The petitioner as complainant had filed a private complaint under Section 138 of the Negotiable Instruments Act against the respondent in C.C.No.160 of 2022. The trial Court, by judgment dated 30.01.2023 dismissed the complaint, against which, the present leave petition and appeal has been filed.

3.The contention of the petitioner is that the respondent had taken a loan from the petitioner during April, 2020 for a sum of Rs.22,00,000/- with an undertaking that 2% interest per month would be paid along with the principal amount. On 21.09.2021, the petitioner, calculating principal and interest amount, demanded the respondent to repay the amount of Rs.29,92,000/-, for which, the respondent had issued a cheque for a sum of Rs.29,92,000/- to the petitioner. Thereafter the cheque was presented on



Crl.O.P.No.7566 of 2023
in Crl.A.SR.No.15789 of 2023

WEB COPY

11.10.2021, which was returned for the reason 'Insufficient funds' with a return memo dated 12.10.2021. Thereafter statutory notice issued on 25.10.2021. Statutory notice was delivered to the respondent on 26.10.2021. Thereafter the respondent neither paid and discharged his liabilities nor sent any reply. Thereafter following statutory procedure complaint has been filed.

4.Before the trial Court, the petitioner examined himself as PW1 and marked Exs.P1 to P5. On the side of the defence, one Ezhilarasan, husband of the respondent was examined as DW1 and through him Exs.D1 to D7 marked. The stand taken by the respondent is that the petitioner is total stranger to her. The respondent had taken loan from one Pugazharasan, Thirukazhukundram and at the time of taking loan, four cheques were given as security. One of the cheque landed in the petitioner's hand and false case has been lodged.

5.The learned counsel for petitioner submitted that the trial Court had failed to consider the falsehood by the respondent and DW1 by creating a defence with false particulars. On the other hand, the Trial Court had given a finding stating that source for lending loan of Rs.22,00,000/- not



CrI.O.P.No.7566 of 2023
in CrI.A.SR.No.15789 of 2023

WEB COPY

proved. No collateral security for such huge amount of loan has been taken and when and where the loan was handed over, no particulars given.

6.The learned counsel further submitted that this finding is perverse and to be set aside on the facts of the case. The respondent herself had not questioned the financial capacity of the petitioner. Further the falsehood of the respondent would get exposed by looking at Ex.D4, which is a reply notice sent to Pugazharasan. In the said reply notice the admitted position of the respondent is that DW1 and his wife Lalithambigai, the respondent herein had approached Pugazharasan, who lent a loan for Rs.5,00,000/-. At that time, two blank cheques, one cheque bearing No.091694 drawn on Federal Bank, Chengalpattu Branch in the name of respondent and another cheque bearing No.351179 drawn on Canara Bank, Tirukazhukundram in the name of DW1 were handed over to the said Pugazharasan. On the contrary in the evidence of DW1, he improved it stating that four cheques have been handed over to Pugazharasan, of which, two cheques bearing Nos.351179 and 351180 drawn on Canara Bank, Tirukazhukundram in the name of DW1 and two cheques bearing Nos.091693 and 091694 drawn on Federal Bank, Chengalpattu in the name of the respondent have been handed over to Pugazharasan, which is a



WEB COPY



Crl.O.P.No.7566 of 2023
in Crl.A.SR.No.15789 of 2023

M. NIRMAL KUMAR, J.

rsi

falsehood, which has been put to the witness during cross examination. In Ex.D4 there is only a mention about two cheques and there is no mention about the disputed cheque No.091693, which the trial Court failed to look into the fact. On the contrary, the trial Court in its judgment at paragraph 13 placing reliance on Ex.D4 dismissing the complaint is not proper.

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

20.02.2024

rsi

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

Crl.O.P.No.7566 of 2023
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