



WEB COPY



Crl.O.P.No.29294 of 2023
in Crl.A.SR.No.21544 of 2023

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M.NIRMAL KUMAR, J.

The petitioner as complainant filed a private complaint against the respondent under Section 138 of Negotiable Instruments Act in C.C.No.2109 of 2018 before the learned Metropolitan Magistrate, Fast Track Court No.II, Allikulam, Egmore. The Trial Court by judgment dated 21.03.2023 dismissed the complaint. Against which the present petition and appeal is filed.

2.The contention of the petitioner is that the brother of the respondent one Suresh was promoting a flat for which the petitioner paid some amount. Thereafter the said Suresh could not complete the project and agreed to repay the same, for which the respondent issued two cheques Ex.P1 and Ex.P2 for a sum of Rs.3,80,000/- and Rs.2,60,000/- claiming that it is his cheques and in discharge of the liability, he is paying the same. Believing his words, the petitioner also received the same and presented the cheques



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for encashment which got dishonoured. Thereafter, following the statutory procedure, complaint was filed.

3.During the trial, the said Suresh submitted that in discharge of his liability, the respondent herein signed and handed over his cheques to the petitioner. Further, the said Suresh and his brother, the respondent herein were jointly doing the business. Thereafter, on appearance of the respondent, the respondent took a stand that the signature found in the cheques is not that of him but he had not replied to the statutory notice when it was issued earlier. Hence, the petitioner came to know about the same only during the trial. Thereafter, it was forwarded to the Handwriting Expert who had confirmed that the signature found in the cheques does not tally with the respondent. Hence, the petitioner examined P.W.2, one Vincent Chelladurai who deposed that the respondent and his brother had come to his office and taken away two cheque leaves of P.W.2 which they have signed and handed over to the petitioner and the balance cheque leaves were available with P.W.2. Further, P.W.3/Bank Manager and D.W.1/Bank



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Manager confirmed that the cheques belong to P.W.2. The Trial Court finding that the respondent has misused the cheques of P.W.2 had deceived and cheated the petitioner by issuance of Ex.P1 and Ex.P2 had come to the conclusion that the Trial Court is exclusively only to try the offence under Section 138 of NI Act and not any other offence and hence, dismissed the complaint which according to the petitioner is not proper. Once the Lower Court had come to the conclusion, it ought to have referred the same to the Chief Metropolitan Magistrate who would have thereafter forwarded the complaint to the concerned Magistrate for further proceedings for the offence under Section 420 IPC. Further, by dismissing the complaint the petitioner had been denied justice and his right to proceed against the offender.

4.Finding reason in the submission of the learned counsel for the petitioners, this Court is inclined to grant leave. Accordingly, leave granted.

M.NIRMAL KUMAR, J.



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5.The Registry is directed to number the appeal and post for admission, if it is otherwise in order.

03.01.2024

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