Crl.O.P.No.19260 of 2024
in
Crl.A.SR.No.33443 of 2024

M.NIRMAL KUMAR, J.

The petitioner as complainant filed a private complaint against the respondent under Section 138 of Negotiable Instruments Act in S.T.C.No.16 of 2017 before the learned Metropolitan Magistrate (FTC), Hosur. The Trial Court by judgment dated 24.05.2024 dismissed the complaint and acquitted the respondent. Against which, the petitioner filed the present petition seeking leave to file an appeal.

2.The contention of the learned counsel for the petitioner is that the petitioner/complainant is employed in Hosur, the respondent was introduced to him through Auditor Rao and they were in friendly terms for more than seven years. The respondent used to borrow loan from the petitioner and repay the same. During 2016, the respondent borrowed a sum of Rs.7,00,000/- and for repayment of the same, he issue a cheque for Rs.7,00,000/- and when the same was presented for encashment, it got dishonoured. Notice was issued by the petitioner which was returned with an endorsement 'No such person'. Thereafter, following the statutory provisions, complaint was filed. During the trial, the complainant examined himself as P.W.1 and marked eight documents, the respondent examined himself as D.W.1 and marked five documents. The primary ground on which the case was dismissed is that the respondent produced a rental agreement/Ex.D1 dated 08.08.2013 showing that the respondent changed his address and therefore, statutory notice dated 28.11.2016 was taken to a wrong address, hence could not be served. This ground coupled with the fact that the respondent examined as D.W.1 and gave explanation stating that the amount borrowed is shown of the year 2016 and the defence taken is that the respondent changed his address in the year 2013, for which, he had produced the rental agreement. The said Rao was the auditor to him during 2011 and 2013, thereafter there was some misunderstanding between them. The cheque in this case is of the year 2016 which fact not considered by the Trial Court. The rental agreement marked with objection and mere marking of the document is not sufficient. The Trial Court heavily relied upon Ex.D1 and the evidence of D.W.1., failing to consider the inherent contradiction in the evidence of D.W.1 with regard to Auditor Rao.

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

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

12.08.2024

cse

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