



WEB COPY



Crl.O.P.No.20629 of 2024
in Crl.A.SR.No.8506 of 2024

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M. NIRMAL KUMAR, J.

The petitioner as complainant had filed a private complaint under Section 138 of the Negotiable Instruments Act against the respondent, which was pending before the trial Court in S.T.C.No.3278 of 2021. The trial Court, by order dated 06.11.2023, dismissed the complaint for non appearance of the complainant, against which, the present leave petition seeking leave of this Court to file the above Criminal Appeal.

2.The contention of the petitioner is that the 1st and 2nd respondents are the cousin brothers and borrowed a sum of Rs. 5,00,000/- for urgent needs and thereafter, they issued two signed cheques for a sum of Rs.2,50,000/- each and promised to repay the said amount within a period of two years. Pursuant to which, they paid interest till February 2020. Thereafter, they denied to pay and avoided to attend the petitioner's phone calls. Hence, he sent a registered post to both respondents for repayment, and the 1st respondent informed the petitioner to present the cheque on 15.12.2020 and requested three months time for paying interest amount. Hence, the petitioner presented the cheque on 29.01.2021 to discharge the said liability.



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However, the said cheque, upon deposit was returned by the bankers on 29.01.2021 on the ground of “insufficient funds”. Therefore, the petitioner caused a legal notice to the respondents on 05.04.2023, which was purposely returned by the respondents with an postal endorsement of the 1st respondent as “Addressee refused” and the 2nd respondent as “Information delivered”. Therefore, the petitioner was constrained to file the complaint under Section 138 of N.I.Act.

3. Before the Trial Court, on 16.03.2023, the petitioner represented through his counsel and one representative counsel appeared for R1, filed petition under section 317 of Cr.P.C and sought permission of the court for passed over. Thereafter, when the matter was taken up at 12.15 p.m, there was no representation for the respondents. Hence, the Trial Court issued non bailable warrant against both the respondents and adjourned the matter to 05.05.2023. On 05.05.2023, the 2nd respondent surrendered and the warrant was recalled, but there is no representation for the 1st respondent and warrant was kept pending as against the 1st respondent and petition under Section 256Cr.PC has been filed on behalf of the 1st respondent. The matter was posted for trial on 08.06.2023. On subsequent hearings, there was no



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representation for the complainant. Hence, the trial Court dismissed the complaint for non appearance under Section 256 of Cr.P.C.

4. Learned counsel appearing for the petitioner would submit that the petitioner lastly appeared on 05.05.2023, and went to Kerala for undergoing bypass surgery Pushpagiri Medical Hospital at that relevant time he fell down and the Doctor advised him to avoid travel and advised to be under medical care. Hence, he could travel come to Chennai to appear before the Trial Court. On 06.11.2023, the counsel for the petitioner filed all medical records and the medical summary issued by the Pushpagiri Medical College Hospital, Kerala pertaining to the petitioner along with petition under Section 256 of Cr.P.C, but the Trial Court failed to consider the medical grounds of the petitioner, erroneously dismissed the petition and acquitted the accused from the charges. Hence, the petition.

5. At the outset, the trial Court failed to consider the health issues, and medical condition of the petitioner and acquitted the respondents without appreciating the evidence, which warrants interference by this Court.



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6. Considering the said facts, this Court is inclined to grant leave.

Accordingly, leave is granted.

23.08.2024

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