



WEB COPY



Crl.O.P.No.18961 of 2024 in
Crl.A.SR.No.35303 of 2024

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M.NIRMAL KUMAR, J.

This petition has been filed seeking to grant leave to the petitioner to prefer the above criminal appeal.

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. 311 of 2018. The Trial Court, by judgment dated 29.04.2024 ,dismissed the complaint and acquitted the respondent, against which, the present petition, seeking leave, has been filed.

3. The contention of the petitioner is that on 18.04.2018 the respondent borrowed a sum of Rs.1,50,000/- from her as hand loan and agreed to repay the same within two months. However, the respondent did not repay the amount within two months. Therefore, the petitioner demanded repayment of the amount. On such demand, the respondent issued two cheques for Rs.1,00,000/- and Rs.50,000/- respectively. on 20.07.2018, the petitioner/complainant presented both the cheques and the same were returned



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with an endorsement "insufficient funds". Therefore, the petitioner-complainant has issued a notice dated 14.06.2018 for which the respondent-accused sent a reply dated 16.08.2018 with false and untenable averments, hence, the complaint under Section 138 of The NI Act was filed.

4. Before the Trial Court, the petitioner examined herself as PW1 and marked Ex.P1 to Ex.P9. On the side of the defence, the respondent-accused examined himself as DW1 and marked Ex.D1.

5. The case of the respondent is that the loan was taken and it was repaid. At the time of availing the loan, the cheques were issued as security. However, even after repayment of the loan amount, the cheques were not returned inspite of requests made by the respondent and his wife. While so, on 06.02.2018, the petitioner along with her men came to the house of the respondent and attacked his wife. Immediately, the wife of the respondent has given a complaint to Thudiyalur Police Station on 09.02.2018 and it was forwarded to the office of the Superintendent of Police, Coimbatore. He further contends that the complainant had not proved as to how the loan was given, either by cheque or cash.



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6. During the cross examination, PW1 admits that she was not aware of the details as to whether the cheque has been given earlier or subsequent to the receipt of the loan amount by the respondent. The Trial Court failed to consider that the statutory presumption is against the respondent under Sections 138 of NI Act for having issued the cheques in question and he failed to probabalise his defence, however, the trial court dismissed the complaint on the ground that presumption has been rebutted by the respondent-accused, without any material.

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

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

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