



WEB COPY



Crl.O.P.No.28031 of 2023
in Crl.A.SR.No.37748 of 2023

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M.NIRMAL KUMAR, J.

The petitioner as complainant filed a private complaint against the respondent for the offence under Section 138 of Negotiable Instruments Act in S.T.C.No.329 of 2018 before the Special Judicial Magistrate Court [Land Grabbing Cases], Salem. The Trial Court by judgment dated 17.04.2023 dismissed the complaint and acquitted the respondent. Against which, the petitioner filed the present petition seeking leave to file an appeal.

2.The primary contention of the learned counsel for the petitioner is that the Trial Court had relied upon the contention of the respondent that the petitioner and one Saminathan had transactions and the cheque was given by the respondent to the said Saminathan which was misused by the petitioner. Further, the said Saminathan who was present before the Court was identified by the petitioner and denied that he has seen him before but in his evidence he states that the said Saminathan was known to him and he is a good friend to him, hence there is a contradiction and with regard to giving of stop payment on 08.10.2014 which was much earlier to the cheque dated



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28.03.2015, which is also highly improbable, hence, disbelieving the case of the complainant, the case was dismissed. Admittedly, though the respondent placed heavy reliance on the fact that there are transactions between the said Saminathan and the petitioner and also bringing the said Saminathan to Court but he was not examined and in fact no witness on the side of the defence was examined to probabalize his defence on the statutory presumption starrng against him. He further submitted that the Trial Court giving a finding that the transaction is only between the petitioner and the said Saminathan is also not proper.

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.

10.01.2024

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