



WEB COPY



Crl.O.P.Nos.19012 & 19017 of 2024
in Crl.A.SR.Nos.35896 & 35897 of 2024

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M.NIRMAL KUMAR, J.

The petitioner as complainant filed a private complaint against the respondent under Section 138 of Negotiable Instrument Act in S.T.C.Nos.2411/2023 and 2418/2023 on the file of the learned XXV Metropolitan Magistrate, Egmore, Chennai. In both the cases, except for the cheque, all other particulars are one and the same, one cheque is for Rs.65,00,000/- and another cheque is for Rs.1,35,00,000/-.

2.The contention of the learned counsel for the petitioner is that the petitioner and the respondent entered into a Memorandum of Understanding [MOU] to take a project in Chennai Metro Rail Limited [CMRL] for Rs.7.92 Crores, it was agreed to invest Rs.3.90 Crores by the respondent and Rs.4 Crores to be invested by the petitioner for the project. For getting the project and for preliminary work, as per the MOU a sum of Rs.1,35,00,000/- by bank transfer and Rs.20,00,000/- by cash was



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transferred by the petitioner to the respondent. Thereafter, it was found that the respondent had cheated the petitioner and in fact, the respondent has neither taken any tender not taken any steps for getting the tender as projected by him. It was agreed between them that if the respondent unable to perform his role as per the MOU, the amount would be repaid and for that reason, he issued two cheques which is inclusive of the amount received from the petitioner and for compensation. When the cheques were presented for encashment, it got dishonoured. Hence, the case filed.

3.The learned counsel further submitted that the Trial Court framed two issues, that there is no legally enforceable debt and the alleged cheques have been issued by the proprietor without arraying the proprietorship concern, namely, M-Film Factory, hence complaint cannot be lodged against the respondent. As regards the second question, the Trial Court rejected the respondent's contention and for the first contention, it had heavily relied on Ex.D1/proof affidavit filed by the petitioner while filing a petition under Section 156(3) Cr.P.C. to register a FIR against the



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respondent. Further, taking a portion of the paragraph where a passing reference has been made has been culled out and relied and it is the main basis to come to the conclusion by the Trial Court that the transaction was an illegal transaction and the money given is for the purpose of bribe and it would amount to corruption and hence, dismissing the complaint is not proper. Ex.D1 has to be viewed in context with MOU to understand the purport of the language found in the affidavit coupled with other factors. But taking a portion of the affidavit, in out of context of the case and dismissing the complaint is not proper. Further, the respondent had not denied his signature and issuance of cheque not dislodged the presumption under Sections 118 and 139 of NI Act. The respondent attempt to give explanation that it is a bribe amount, stoutly denied by the petitioner not once but on four places in his evidence. Hence, the Trial Court dismissing the complaint is perverse and not sustainable in law.

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



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

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