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Crl.O.P.Nos.19198, 19201, 19203, 19207 and 19209 of 2024
in

Crl.A.SR.Nos.37487, 37696, 37697, 37698 and 37700 of 2024

M.NIRMAL KUMAR, J.

These petitions have been filed seeking to grant leave to the petitioner to prefer the above criminal appeals.

2. The petitioner, as complainant had filed a private complaint under Section 138 of the Negotiable Instruments Act against the respondents/accused in C.C. Nos. 6034, 6035, 6036, 6037 and 6038 of 2012. The Trial Court by judgment dated 24.05.2024 dismissed the complaints, acquitted the respondents, against which, the present petitions seeking leave have been filed.

3. The contention of the petitioner is that the petitioner and the respondents had business dealings. The petitioner, after rendering logistics service, had raised various invoice for payment. In order to discharge the dues/liability, the accused issued the cheques for a total sum of Rs.6 lakhs



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and when they were presented, dishonoured for the reason insufficient funds. The petitioner issued notice dated 24.09.2011, calling upon the respondent to repay the sum of Rs.6 lakhs covered under the cheques. The respondent-accused sent a reply dated 30.09.2011 for which a rejoinder was also sent by the petitioner on 05.12.2011. Thereafter, the complaint was lodged before the Fast Track Magistrate Court No.1, Egmore, but subsequently, as per the decision of the Honourable Apex Court in *Dashrath Rupsingh Rathod vs. State of Maharashtra (2014) 9 SCC 129* the complaint was transferred to Nagercoil where proof affidavit was filed by the complainant. However, after insertion of Section 142 (2) and 142-A of The Negotiable Instruments Act, 1881, once again the complaint was transferred from Nagercoil to the file of the Metropolitan Magistrate, Fast Track Court, Egmore, Chennai. While transferring, according to the petitioner the original cheques have been misplaced and hence, he had filed a petition under Section 65 of Indian Evidence Act, 1872 in CrI.M.P.No.46691 of 2023 seeking permission to mark the photocopies of the cheques/other documents as secondary evidence, which was permitted. Thereafter, the same have been filed during trial. The trial was concluded.



The respondents neither examined any witnesses nor marked any document.

But the Trial Court dismissed the complaint on the sole ground that the cheques marked by the complainant, as secondary evidence, cannot be taken into consideration. The fact remains that the trial court itself permitted to mark the copies of cheques vide order dated 26.02.2024 in Crl.MP No. 46700 of 2023.

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

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

09.08.2024

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