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Crl.O.P.No.19556 of 2024
in Crl.A.SR.No.23383 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.270 of 2022. The trial Court, by order dated 01.04.2024, dismissed the complaint, 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 respondent had received a hand loan for a sum of Rs.10,00,000/- for his business on 15.02.2021 and thereafter, he issued a cheque on 26.11.2021 drawn on Indian overseas bank, Tindivanam Branch to discharge the said liability. However, the said cheque, upon deposit on 26.11.2021, was returned by the bankers on 30.11.2021 on the ground of insufficient funds. Therefore, the petitioner caused a legal notice to the respondent on 07.03.2022, which was received by the respondent on 08.03.2022, but no reply was sent by the respondent. Therefore, the petitioner was constrained to file the complaint under Section



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138 of N.I.Act.

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3. Upon issuance of summons, the respondent appeared and was served with the copies of the documents and as the respondent pleaded not guilty, the court below proceeded with the trial of the case. At the time of trial, on the side of the petitioner, P.W.1 was examined and Exs.P-1 to P-7 were marked. On the side of the respondent, Ex.D.W-1 was examined. On the basis of oral and documentary evidence, the court below found the respondent not guilty of the offence and, accordingly, acquitted the respondent and the petition was dismissed on 01.04.2024. Due to the dismissal of the complaint, the petitioner had been denied of his substantial right of justice.

4. The primary ground on which the complaint has been dismissed is that the petitioner had failed to prove his source of lending amount to the respondent to the tune of Rs.10,00,000/-. The statutory notice issued by the petitioner to the address of the respondent had been received by some one in his house. He had not given any reply to the said notice, nor had made any payment towards the dishonoured cheque. He had not demanded back the



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cheque nor taken any steps for getting back the cheque, except the mere averment that he had issued the cheque to one Mr.Kumar, who is no more and the cheque has been misused by his brother. The respondent himself in his chief examination had stated that he had given the cheque to the said Mr.Kumar in the year 2019, and in his cross examination, he had stated that the said Bank account from which the cheque was issued had been closed 10 year back, but the cheque was dishonoured due to funds insufficient. However, without properly appreciating the above, the court below has acquitted the respondent, which deserves interference at the hands of this Court.

5. At the outset, the trial Court failed to see that the respondent had not produced any evidence regarding the closure of the bank account, and the said cheque had not been dishonoured due to closure of account, but due to maintenance of insufficient balance in the account. Moreover, the presumption u/s 139 falls heavily on the respondent and the respondent having not rebutted the presumption by placing any material to show the reason as to why the cheque was given, necessarily it has to be held against the respondent.



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6. Finding reason and force in the petitioner's submission, 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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