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Crl.O.P.No.19924 of 2024
in Crl.A.SR.No.40353 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 Instruments Act in S.T.C.No.9991 of 2023 before the learned XXVI Metropolitan Magistrate, Egmore. The Trial Court by judgment dated 10.07.2024 dismissed the complaint and acquitted the respondent. Against which, the petitioner filed the present petition seeking leave to file an appeal.

2.The contention of the learned counsel for the petitioner had a business dealing with one K.M.Mustafa, who deceived the petitioner, received around Rs.2.20 Crores and thereafter, failed to perform the agreement and business. The petitioner lodged a complaint against the said K.M.Mustafa before the CCB Police and a case in Crime No.170 of 2021 for the offence under Sections 406, 420 and 506(i) r/w. 34 IPC registered.



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The said K.M.Mustafa was arrested and remanded to judicial custody on 24.09.2022. The respondent and one Ramees Ali, son-in-law of K.M.Mustafa, approached the petitioner for a compromise to resolve the issue and agreed to repay the amount which was misappropriated and cheated by the said K.M.Mustafa. A memorandum of understanding was entered into between the petitioner and the respondent herein, who handed over three cheques for Rs.25,00,000/- each. When the first cheque was presented for encashment, it got dishonoured and hence, complaint lodged after following the statutory provisions. The respondent failed to receive the statutory notice, caused it to be returned and thereafter, complaint lodged. The petitioner examined himself as P.W.1 and marked Ex.P1 to Ex.P6. Ex.P1 is the memorandum of understanding and Ex.P2 is the bail order of Mustafa in Crl.M.P.No.30117 of 2022, in which it is clearly recorded, the petitioner entering into compromise with Ramees Ali and Shajahan, thereafter based on the compromise the CCB Court granted bail to the said K.M.Mustafa. Thus, the memorandum of understanding was not obtained by force or fraud. Whatever transaction was between the petitioner



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and K.M.Mustafa, it is for them to proceed regarding the same and that cannot be stretched for the issuance of cheque not in discharge of liability. The Trial Court on a wrong presumption finding that the amount has been paid to K.M.Mustafa for a railway contract and hence, it cannot be termed as legally enforceable debt is not proper. As regards the issuance of cheque by the respondent is pursuant to the MOU.

3.Considering the above submissions, this Court finds that the issuance of cheque by the respondent is not denied, memorandum of understanding not denied and also recorded in Crl.M.P.No.30177 of 2022 while granting bail to the said Mustafa. In such circumstances, terming that the issuance of cheque is not for legally enforceable debt is not proper. Hence, 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.



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