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Crl.O.P.No.20472 of 2024
in Crl.A.SR.No.41408 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 C.C.No.660 of 2017. The trial Court, by order dated 07.06.2024, 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 petitioner and the respondent are friends. Out of the said relationship, the respondent had received a sum of Rs.34,50,000/- on various dates to develop his business. and thereafter, he issued a cheque on 12.06.2017 drawn on City Union Bank, Singanallur Branch, Coimbatore to discharge a portion of the said liability. However, the said cheque, upon deposit, was returned by the bankers on 14.08.2017 on the ground of insufficient funds. Therefore, the petitioner caused a legal notice to the respondent on 12.09.2017, which was received by the respondent on 14.09.2017, but no reply was sent by the respondent. Therefore, the petitioner was constrained to file the complaint under Section 138 of N.I.Act.

3. Upon issuance of summons, the respondent appeared and was



CrI.O.P.No.20472 of 2024
in CrI.A.SR.No.41408 of 2024

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-6 were marked. On the side of the respondent, Ex.D.W-1 was examined and Ex.D1 was marked. 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 07.06.2024. Due to the dismissal of the complaint, the petitioner had been denied of his substantial right of justice.

4. Admittedly, the petitioner and the respondent are friends. The respondent had taken loan for development of his business. Thereafter, he has not repaid the said amount. The Trial Court has failed to consider the Ex.P2 as the petitioner has submitted the bank transactions and paid the amount to the respondent through RTGS and NEFT. Moreover, the respondent has not submitted any documents evidencing that the cheque was issued in coercion, if he had issued the cheque due to coercion, he would have given stop payment instructions to his bank to stop the payment.

5. Further the case of the respondent is that the specific cheque was



Crl.O.P.No.20472 of 2024
in Crl.A.SR.No.41408 of 2024

forcibly obtained in the month of January, 2016, but the cheque is of the year June 2017. It is pertinent to note that the respondent has created false documents and the trial court had failed to consider the same and also the fact that the respondent had not denied his signature. However, without properly appreciating the above, the court below has acquitted the respondent, which deserves interference at the hands of this Court. 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.

6. Being satisfied with the reasons stated in the accompanying affidavit filed in support of this petition, this petition stands allowed and leave is granted to the petitioner to prosecute the appeal.

23.08.2024

Note: Registry is directed to number the Criminal Appeal, if it is otherwise in order.
msv

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