



WEB COPY



Crl.O.P.No.20380 of 2024
in Crl.A.SR.No.41567 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.484 of 2023. The trial Court, by order dated 19.06.2024, 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 respondent had received a hand loan for a sum of Rs.4,00,000/- for his business on 14.02.2023 and thereafter, he issued a cheque on 14.03.2023 drawn on Equitas bank, Salaipudur Branch to discharge the said liability. However, the said cheque, upon deposit on 14.03.2023, was returned by the bankers on 15.03.2023 on the ground of insufficient funds. Therefore, the petitioner caused a legal notice to the respondent on 05.04.2023, which was received by the respondent on 08.04.2023, but no reply was sent by the respondent. Therefore, the petitioner was constrained to file the complaint under Section 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-4 were marked. On the side of the respondent, Ex.D.W-1 and D.W-2 were examined and Ex.D1 and D2 were 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 19.06.2024. Due to the dismissal of the complaint, the petitioner had been denied of his substantial right of justice.

4. The Trial Court failed to consider that during cross examination, the respondent admitted the signature in the cheque, the presumption envisaged in Section 118 of the Act can legally be inferred that the cheque was made or drawn for consideration on the date which the cheque bears Section 139 of the Act enjoins on the Court to presume that the holder of the cheque received it for the discharge of any debt or liability. The respondent failed to discharge his burden of proving his case. However, without properly appreciating the above, the court below has acquitted the respondent, which



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deserves interference at the hands of this Court.

5. At the outset, the trial Court acquitted the respondent based on his defense without any proof or rebuttal of the evidence let in by the petitioner. The Trial Court failed to consider that the respondent did not give any reasonable explanation disputing how the cheques were reached in to the hands of the petitioner. 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. 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.
msv

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