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CrI.O.P.No.22305 of 2024
in CrI.A.SR.No.44809 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.110 of 2018 before the learned Judicial Magistrate, Fast Track Court No.I, Erode. The Trial Court by judgment dated 30.09.2022 convicted the respondent and sentenced him to undergo three months simple imprisonment and to pay the cheque amount of Rs.1,02,49,692/- as compensation. During the trial, the petitioner examined himself as P.W.1 and marked Ex.P1 to Ex.P24 and on the side of the respondent, no witness examined and no documents marked. Aggrieved against the conviction, the respondent preferred an appeal before the Principal Sessions Court, Erode in C.A.NO.206 of 2022. The learned Sessions Judge by judgment dated 28.06.2024 allowed the appeal and set aside the conviction and sentence imposed by the Trial Court. Against which, the petitioner filed the present petition seeking leave to file an appeal.



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2.The learned counsel for the petitioner submits that the Trial Court had rightly convicted the respondent but the Lower Appellate Court on a wrong reading and understanding of the evidence had given a finding that the cheques Ex.P2 to Ex.P15 have been given as security and not for discharge of any liability. Further it gives a finding that there is a difference in the ink used for the signature and to fill up the amount in the cheque. Admittedly, in this case the respondent had not sought for any forwarding of cheque to expert opinion and questioned the same. Added to it, it is submitted that the issuance of cheque and the signature in the cheque have not been denied, hence the statutory presumption under Section 139 of the Negotiable Instruments Act stares against the respondent. The respondent had not probalilized by way of defence that the liability of the cheque has been discharged. He further submitted that on cross examining the petitioner, he was questioned with regard to the invoice and the petitioner invoices/Ex.P23 and Ex.P24 but takes a stand that the invoices contain only the signature of the authorized signatory of the complainant and it is only in the delivery challan the recipient of the goods is necessary and not in the invoice which fact has been missed by the Lower Appellate Court.



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3.Considering the above submissions, this Court finds that the issuance of cheque and the signature in the cheque is not denied by the respondent. Further, it is seen that the Trial Court had convicted the respondent and the Lower Appellate Court had reversed the judgment of the Trial Court. In view of the contra judgments and also considering the points raised by the learned counsel for the petitioner, 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.

17.10.2024

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