



WEB COPY



CrI.O.P.No.28846 of 2023

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in
CrI.A.SR.No.54137 of 2023

M. NIRMAL KUMAR, J.

This petition has been filed seeking to grant special leave to the petitioner to prefer the above criminal appeal.

2.The petitioner as complainant had filed a private complaint under Section 138 of the Negotiable Instruments Act against the respondent in C.C.No.3658 of 2019. The Trial Court by judgment dated 26.09.2023 dismissed the complaint, acquitted the respondent, against which, the present leave petition has been filed.

3.The contention of the petitioner is that the respondent is known to the petitioner and the respondent was working in a bank and they were having good relationship. In such circumstances, the respondent approached the petitioner for hand loan. On his request, a sum of Rs.3,00,000/- was given as hand loan on 21.01.2018 and the respondent agreed to repay the loan with interest of 10% per annum. In discharge of the said liability, the respondent issued the cheque dated 14.02.2019 for Rs.3,00,000/-. When the cheque was presented for encashment, the same was dishonoured. Thereafter, statutory notice issued,



which was returned and thereafter complaint has been filed. During the trial, the petitioner examined himself as PW1 and marked Exs.P1 to P4.

4.The further contention of the petitioner is that even in the statutory notice as well as in his evidence, he clearly stated that the respondent had already taken loan from the petitioner and also executed promissory note. During cross examination, it was suggested that no pro-note has been filed. The categorical answer of the petitioner is that he is ready to produce the pro-note. Thereafter the respondent had not taken any steps seeking production of pro-note and further in his evidence, it was made clear that the cheque was filled up by the petitioner, since the respondent was not fluent in English. The respondent not denied his signature in the cheque and for what reason the cheque was handed over, no explanation was given. The Trial Court finding is, while examining the accused/respondent under Section 313 Cr.P.C. questioning, the respondent gave explanation that the cheque was given for some other purpose, but for what purpose, no explanation given. The Trial Court failed to consider, statutory presumption is starrng against the respondent under Sections 118 and 139 of NI Act and the respondent failed to probabalise his defence, had dismissed the complaint stating that presumption has been rebutted without any material.



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5.Finding reason and force in the petitioner's submission, this Court is inclined to grant leave. Accordingly, leave is granted.

02.01.2024

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