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Crl.O.P.No.26899 of 2023
in
Crl.A.SR.No.57553 of 2023

M.NIRMAL KUMAR, J.

The petitioner as complainant filed a private complaint against the respondent for the offence under Section 138 of Negotiable Instruments Act in C.C.No.60 of 2018 before the learned Judicial Magistrate at Avinashi, Coimbatore. The Trial Court by judgment dated 25.09.2023 dismissed the complaint and acquitted the respondent. Against which, the petitioner filed the present petition seeking leave to file an appeal.

2.Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 28.11.2023, which read as follows:

> The petitioner/complainant filed a private complaint against the respondent for the offence under Section 138 of NI Act. The Trial Court dismissed the complaint. Against which, the petitioner filed the present petition seeking leave.
>
> 2.The contention of the petitioner is that the Trial

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Court dismissed the complaint on the sole ground that the petitioner was unable to give the details as to for what purpose the cheque was given contrary to Ex.P13 wherein the respondent had given an undertaking that he issued two cheques for Rs.8 lakhs and Rs.9 lakhs for the debt of Rs.17 lakhs which he borrowed from the petitioner.

3.On perusal of the judgment of the Lower Court, it is seen that the Lower Court dismissed the complaint not on this ground alone, it had questioned the very jurisdiction and also limitation on the point that the cheque was presented thrice before the Indian Bank, Alwarpet Branch which is confirmed by Ex.P3 and Ex.P4. On the contrary, the petitioner presented the cheque before the Indian Bank, Tirupur Branch and cause of action would not arise in Tirupur. Further with regard to return of cheque at the first instance he issued statutory notice and the same was produced by the respondent and marked as Ex.D1 which is not disputed by the petitioner.

4.At this juncture, the learned counsel for the petitioner seeks time to produce the evidence and materials in support of his contention.

5.Post the matter on 12.12.2023."

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3.Today, the learned counsel for the petitioner produced the additional typed set of papers and submitted that the finding of the Trial Court is perverse and liable to be set aside on two grounds. Referring to paragraphs 21 and 23 of the judgment of the Trial Court, the learned counsel submits that earlier on two occasions the petitioner presented the cheque at India Bank, Alwarpet Branch and on the third occasion, he presented the cheque at Indian Bank, Avinashi Road Branch. In view of the same the finding of the Trial Court that the Court at Avinashi has no jurisdiction is not proper since as per Section 142 of Negotiable Instruments Act, the complaint to be filed within the jurisdiction of the complainant's Bank where he maintains the account. Thus the finding of the Trial Court is not proper. He further submitted that the Trial Court referring to earlier notice issued which has been marked as Ex.D1 by D.W.1 held that the case is barred by limitation which is also not proper. The learned counsel relied on the decision in the case of ***MSR Leathers vs. S.Palaniappan and another*** reported in ***(2013) 10 SCC 568*** in which the Apex Court held that the prosecution based on

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second or successive dishonour of the cheque is permissible under Section 138 of the Negotiable Instruments Act.

4.Finding reason in the submission of the learned counsel for the petitioner, this Court is inclined to grant leave. Accordingly, leave granted.

5.The Registry is directed to number the appeal and post for admission, if it is otherwise in order.

10.01.2024

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