



WEB COPY



Crl.O.P.Nos.29295, 29297 & 29298 of 2023
in
Crl.A.SR.Nos.59005, 59003 & 59004 of 2023

Crl.O.P.Nos.29295, 29297 & 29298 of 2023
in
Crl.A.SR.Nos.59005, 59003 & 59004 of 2023

M.NIRMAL KUMAR, J.

The petitioner as complainant filed private complaints against the respondent under Section 138 of Negotiable Instruments Act in C.C.Nos.8555/2019, 557/2019 and 8556/2019 before the learned XX Metropolitan Magistrate, Allikulam, Egmore, Chennai. The Trial Court by judgment dated 19.10.2023 dismissed the complaint. Against which the present petitions and appeals were filed.

2.The contention of the petitioner is that the Trial Court had misread the evidence and wrongly appreciated the facts and rendered the judgment of acquittal. According to the petitioner, he is a Contractor and the respondent is the Sub-Contractor. The respondent used to collect materials from the petitioner on credit basis and since it was a road contract, as and when the respondent received the contract amount, he would repay for the material received. After receiving huge number of materials, the respondent



Crl.O.P.Nos.29295, 29297 & 29298 of 2023
in
Crl.A.SR.Nos.59005, 59003 & 59004 of 2023

WEB COPY

handed over the cheques to the petitioner on the promise that as and when he receive the contract amount, he would repay the amount and get back the cheques, but he failed to repay the amount. Hence, the cheques were presented for encashment which got dishonoured and hence, following the statutory procedure, complaints lodged. Three cases were initiated, one case against one Mrs.N.Krishnaveni in C.C.No.8555 of 2019 and two cases are against her husband/Mr.G.Nageswaran in C.C.Nos.8556/2019 and 8557/2019. The Trial Court by judgment dated 19.10.2023 dismissed all the three complaints.

3.The contention of the learned senior counsel appearing for the petitioner is that the Trial Court primarily dismissed the complaint on the ground that the respondent received a sum of Rs.1,55,00,000/- on various dates but Ex.P12 would reflect only the bank transaction with regard to Rs.80,00,000/- and for the balance Rs.75,00,000/-, there is no entry. But the explanation given by the petitioner is that the balance amount of Rs.75,00,00/- has been given by cash. But the Trial Court held that such



Crl.O.P.Nos.29295, 29297 & 29298 of 2023
in
Crl.A.SR.Nos.59005, 59003 & 59004 of 2023

WEB COPY

huge amount cannot be given in cash which is not proper since it is a road contract, there is supply of bitumen and other products which is of high value and it is common in the business of road contractors to get such credits on an understanding and handing over security cheques is acceptable. He further submitted that the explanation given by the respondent is that during the year 2012 – 2013 the entire transaction took place and at that time, cheques and promissory notes were given as security. The respondent further examined D.W.2/Manager, Union Bank of India who in his evidence admitted that the cheque containing Sl.Nos.195401 to 195500 was issued to the respondent on 08.05.2014 which cuts the roots of the case and exposes the falsity of the respondent's defence since the cheque book itself given in the year 2014 but the respondent took a defence that the transaction is of the year 2012-2013 for which security cheques were given. He further submitted that the Trial Court to Question No.4 referred to the evidence recorded in C.C.No.8555 of 2019 that the petitioner had admitted that he received Rs.6,46,73,837/- out of Rs.7,66,73,870/-, therefore finding that explanation given by the petitioner is acceptable and for cash transaction of



Crl.O.P.Nos.29295, 29297 & 29298 of 2023
in
Crl.A.SR.Nos.59005, 59003 & 59004 of 2023

WEB COPY

Rs.75,00,000/- there is no document produced and hence, acquitted the accused which is not justifiable on the evidence and materials produced.

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

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

14.02.2024

cse



WEB COPY



Crl.O.P.Nos.29295, 29297 & 29298 of 2023
in
Crl.A.SR.Nos.59005, 59003 & 59004 of 2023

M.NIRMAL KUMAR, J.

cse

Crl.O.P.Nos.29295, 29297 & 29298 of 2023
in
Crl.A.SR.Nos.59005, 59003 & 59004 of 2023

14.02.2024