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Crl.O.P.No.28085 of 2023
in Crl.A.SR.No.60678 of 2023

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M.NIRMAL KUMAR, J.

The petitioner as complainant filed private complaint against the respondent under Section 138 of the Negotiable Instruments Act in C.C.No.303 of 2010 before the learned Judicial Magistrate No.II, Erode. The Trial Court dismissed the complaint by judgment dated 30.08.2023 and acquitted the respondent. Against which, the petitioner filed the present petition seeking leave to file an appeal.

2.The contention of the petitioner is that the business transaction between the petitioner and the respondent is not in dispute and during the course of business transaction, 3 cheques were given to the tune of Rs.1,08,000/-, for which this case was filed. All the statutory conditions were complied with, signature in the cheques has not been disputed and the only defence taken by the respondent is that the liability with regard to the cheques were discharged by the respondent by paying the amount to one



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Tamilarasan, who is the employee of the petitioner. The said Tamilarasan was not examined, except for this explanation there is no contemporary material to show that the liability has been discharged. Further, the Lower Court referred to civil suit in O.S.No.53 of 2013 pending on the file of Additional Principal Sessions Court, in which the claim is Rs.7,12,774/-, on the contrary, the complaint under Section 138 N.I. Act is for Rs.8,11,820/- and hence, there is a doubt in the liability. Further, referred to Ex.D10 and Ex.D11 which is the complaint lodged by the respondent to the Superintendent of Police on 07.05.2010 wherein C.S.R.No.72 of 2010 assigned, thereafter only the complaint was lodged on 23.09.2010.

3.The learned counsel for the petitioner submitted that though the respondent produced Ex.D5/acknowledgment card, he had not produced the reply denying the liability or making any payment to Tamilarasan. He would submit that comparing the civil suit and complaint under Section 138 NI Act is not proper and also the police complaint which was earlier lodged. He would further submit that if the respondent had materials, he could have



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pursued the Police complaint and taken it to logical conclusion, on the other hand in the present complaint, projected as though the liability has been discharged. Further, the Lower Court on the initial examination under Section 251 Cr.P.C. and explanation under Section 313(1) Cr.P.C. found that by the respondent's explanation, he has probabilized his defence, which is not proper.

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.

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