



WEB COPY



Crl.O.P.No.1292 of 2024
in Crl.A.SR.No.59562 of 2023

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M. NIRMAL KUMAR, J.

The petitioner's father Rajendran had lodged a private complaint against the respondent for offence under Section 138 of the Negotiable Instruments Act. The Trial Court by judgment dated 22.10.2021 in S.T.C.No.1512 of 2018, dismissed the complaint acquitting the respondent, against which, the present petition has been filed seeking leave of this Court to file an appeal.

2.This Court, by order dated 03.01.2024 in Crl.M.P.No.20089 of 2023, permitted the petitioner/legal heir of the deceased complainant Rajendran to pursue the complaint on behalf of his father.

3.The learned counsel for petitioner submitted that in this case three witnesses examined as PW1 to PW3 and marked Exs.P1 to P9. PW1 and



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PW2 are brothers and PW3 is the Manager of the Bank. On the side of the defence, another Bank Manager/DW1 examined and marked Exs.D1 to D5.

4.The primary ground raised by the respondent is that the petitioner being a driver and receiving meagre salary has got no resources to lend the amount of Rs.10,00,000/- as loan to the respondent. Further security cheque has been given for the transaction between Manimaran, brother of the complainant and the respondent through the Power of Agent Ramesh and there was some dispute for which a cheque which was given as security for a chit transaction had been misused by the petitioner and without any liability he filed a complaint. This reasoning given by the Trial Court is not proper. The respondent initially took a stand that the cheque was given during the transaction between the petitioner's brother and Ramesh. With this reason, he sent a reply notice/Ex.P5 for which a rejoinder/Ex.P6 had been sent by the petitioner.



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5.The respondent further takes up a new plea as though the cheque which was given as security during chit transaction has been misused. He further submitted that the petitioner is doing agricultural work and having agricultural income is not denied. Further agricultural income does not attract income tax. Further the trial Court giving a finding that it is for the petitioner to examine the said Ramesh to prove its case is not proper. The defence taken by the respondent is that Ramesh had acted as Power of Agent for the respondent and through him there was some transaction between the respondent and petitioner's brother Manimaran. The said Manimaran examined as PW2, cross examined in detail, given explanation denying the suggestions of the respondent. This being so, the trial Court giving such finding is not proper.



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

01.02.2024

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