



Crl.O.P.No.10072 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2024

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

Crl.O.P.No.10072 of 2024
in Crl.A.SR.No.11937 of 2023

K.Shanmugam

... Petitioner/Appellant

Vs.

C.Owen Joseph Gilbanks

... Respondent/Respondent

Prayer in Crl.O.P.No. 10072 of 2024 : Criminal Original Petition filed u/s.378(4) of the Code of Criminal Procedure, seeking to grant leave to file the appeal against the judgment dated 08.12.2022 passed in S.T.C.No.1719 of 2016 on the file of the learned Judicial Magistrate, Udthagamandalam, The Nilgiris.

Prayer in Crl.A.SR.No.11937 of 2023 : Criminal Appeal filed under Section 378 of the Code of Criminal Procedure Code, to set aside the Judgment dated 08.12.2022 passed in S.T.C.No.1719 of 2016 on the file of the learned Judicial Magistrate, Udthagamandalam and consequently convict the accused/respondent and reverse the above judgment.

For Petitioner : Mr.J.Bharathi Raja

ORDER

Assailing the order of acquittal dated 08.12.2022 passed in S.T.C.No.1719 of 2016 by the learned Judicial Magistrate,



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Udhagamandalam, the present petition has been filed by the petitioner seeking leave to file appeal.

2. It is the case of the petitioner that the respondent borrowed a sum of Rs.2.50 Lakhs as hand loan from the petitioner on 14.06.2012 promising to return the same in five months and also issued a post dated cheque dated 19.11.2012, bearing No.445074 for the aforesaid sum. When the petitioner presented the cheque for encashment through The Nilgiris District Central Cooperative Bank Ltd., Udhagamandalam, the same was returned by the bankers on 20.11.2012 on the ground of insufficient funds. Therefore, the petitioner caused a legal notice to the respondent on 13.12.2012, which was received by the respondent on 14.12.2012 to which reply was sent by the respondent. Therefore, the petitioner was constrained to file the complaint.

3. Upon issuance of summons, the respondent appeared and was served with the copies of the documents and as the respondent pleaded not guilty, the court below proceeded with the trial of the case. At the time of trial, on the side of the petitioner, P.W.1 was examined and Exs.P-1 to P-5 were marked. The respondent examined himself as D.W.1



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and marked Exs.D-1 to D-5. On the basis of oral and documentary evidence, the court below found the respondent not guilty of the offence and, accordingly, acquitted the respondent, aggrieved by which the present petition has been filed seeking leave to appeal.

4. Learned counsel appearing for the petitioner submitted that the presumption u/s 139 falls heavily on the respondent and the respondent having not rebutted the presumption by placing any material to show the reason as to why the cheque was given, necessarily it has to be held against the respondent. However, without properly appreciating the above, the court below has acquitted the respondent, which deserves interference at the hands of this Court.

5. This Court gave its anxious consideration to the submission advanced by the learned counsel for the petitioner and perused the materials available on record.

6. It is the consistent ratio of the Courts that grant of leave is not a matter of right; rather it is the edifice on which the liberty of the person, who has been accused of a crime rests and where a person, who had been accused of a crime had been acquitted by the court below, a presumption



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follows the golden rule that a person is presumed innocent until proven guilty and on that basis the second presumption on the basis of the acquittal necessitates the appellate court to scrutinize the materials more carefully. Further, grant of leave to prosecute should not be as a matter of routine, but should be on just and equitable basis, when materials reveal that the court below has not appreciated the materials in proper perspective.

7. With the above in mind, a perusal of the materials on record reveals that the respondent had denied that the cheque was given towards the discharge of a legally enforceable debt. In fact, it is the case of the respondent that he does not know the petitioner and that the petitioner is a stranger and that he had given the cheque to one Jawahar, which was misused by the petitioner.

8. The court below has premised its finding not merely on technicalities, as has been put forth by the petitioner, but it is more on sound logic. The trial court, based its findings on the deposition of the petitioner, P.W.1, who had deposed that he gave the amount of Rs.2.5



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Lakhs as loan towards which a promissory note was given and, thereafter, the respondent gave the post dated cheque and got the promissory note.

The trial court has held that the stand of the petitioner is contradictory as in the complaint it is the specific case of the petitioner that upon the loan being given, post dated cheque was issued, however, a contra stand is taken during examination, wherein the petitioner has stated that initially a promissory note was given by the respondent and later upon giving the post dated cheque, the respondent had taken back the promissory note. Therefore, the court below held that there is no document to prove that there was a loan transaction between the petitioner and the respondent. This Court is at a loss to understand as to how the promissory note was returned back to the respondent by the petitioner on merely receiving a post-dated cheque, for which there is no proper explanation from the petitioner in his deposition.

9. It is seen that there is no material evidencing the payment of Rs.2.50 Lakhs as loan to the respondent. Though the petitioner claims that it is a hand loan, the only link to show such an amount was given is the alleged promissory note, which is alleged to have been returned back



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to the respondent. Therefore, in the absence of any material to establish the payment of Rs.2.50 Lakhs, which alone would show that there is a legally enforceable debt, towards the discharge of which the cheque was issued, which had been returned unpaid, the court below was fully justified in rejecting the complaint filed by the petitioner.

10. As stated above, to grant leave, a case should be made out which bristles with infirmities which strikes at the root of the findings recorded. However, in the case on hand, the petitioner has not made out a case, where the findings are so very perverse that there has been miscarriage of justice warranting this Court to grant leave to set right the wrong that has been committed by the courts below.

11. No infirmities or other materials are placed which necessitates relook into the findings recorded by the courts below and granting leave to appeal would be nothing but a travesty of justice insofar as the respondents are concerned, who have been acquitted through a well considered judgment passed by the court below.



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12. In the aforestated circumstances, no case is made out by the petitioner for grant of leave and, accordingly, this criminal original petition is dismissed. Consequently, the criminal appeal is rejected at the SR stage itself.

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Index : Yes / No
Speaking order / Non-speaking order
NCC : Yes / No
sp

To

1.The Judicial Magistrate, Udhagamandalam, The Nilgiris.



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M.DHANDAPANI, J.

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