

Crl.O.P.No.17179 of 2016
in
Crl.A.Sr.No.10094 of 2016

M.VENUGOPAL, J.

Heard both sides.

2.The Petitioner/Appellant/Complainant has focused the instant Criminal Original Petition before this Court seeking to 'Grant of Special Leave' to prefer an Appeal as against the Judgment dated 21.07.2015 in Crl.A.No.67 of 2014 passed by the Learned Principal District and Sessions Judge, Krishnagiri.

3.The Learned Principal District and Sessions Judge, Krishnagiri (First Appellate Court), while passing the impugned Judgment in Crl.A.No.67 of 2014 (filed by the Respondent/Accused) on 21.07.2015, had categorically opined that the Petitioner/Appellant had no requisite wherewithal to advance a sum of Rs.5,00,000/- and further proceeded to opine that this aspect of the matter was not borne in mind by the trial Court and furthermore, the Appellant/Complainant's witness P.W.2 had deposed that he does not know as to who is the Accused and came

to the consequent conclusion that his evidence was not trustworthy and ultimately, set aside the Judgment of the trial Court in S.T.C.No.21 of 2014 dated 19.09.2014 and acquitted the Respondent/Accused.

4.Earlier, the trial Court, while passing the Judgment in S.T.C.No.21 of 2014, on 19.09.2014, had observed that the Complainant in his cross examination had stated that he owns 3.5 acres of land and through the said land, he would get an income of Rs.40,000/- to Rs.50,000/- and therefore, it came to the conclusion that the plea taken on behalf of the Respondent that the Complainant had no requisite means to advance Rs.5,00,000/- was not to be accepted. That apart, the trial Court opined that on behalf of the Respondent/Accused, no acceptable evidence was produced to state that the case of the prosecution was a wrong one and also it opined that except R8, the call details (in respect of the telephone number of R.Venkatesappa) from the telephone number of the Appellant/Complainant, no other document was produced on behalf of the Respondent and ultimately, found the Respondent/Accused guilty in respect of an offence under Section 138 of the Negotiable Instruments Act, 1881 and imposed a

punishment of six months Simple Imprisonment and also the Respondent/Accused was directed to pay a sum of Rs.5,00,000/- to the Appellant as compensation.

5.Challenging the 'Judgment of Acquittal' dated 21.07.2015 in Crl.A.No.67 of 2014 passed by the First Appellate Court, the Learned Counsel for the Petitioner submits that the First Appellate Court had failed to take into account of a significant fact that the Respondent/Accused had not disputed his signature and the cheque amount and therefore, the 'Onus of Proof' lies on the Respondent/Accused.

6.The Learned Counsel for the Petitioner/Appellant comes out with a plea that the Respondent/Accused is to prove that the cheque in question was given as security to one Vekatesappa as per Section 102 of the Indian Evidence Act, 1872 and this plea was not looked into by the First Appellate Court in a real and proper perspective.

7.The other contention projected on behalf of the Petitioner/Appellant is that the Respondent/Accused had admitted the signature

and also he had admitted that the cheque was sent by him and the cheque in question was also filled up by him.

8.In response, the Learned Counsel for the Respondent/Accused takes a stand that under Ex.P.1 – Cheque, the Name of the Payee and the amount are in different Ink and that the Appellant/Complainant had opened his account on 14.11.2013 and first cheque was deposited by him bears a No.320440 purported to have been issued by the Respondent towards the loan transaction and the said cheque dated 20.11.2013 was returned on 21.11.2013.

9.At this juncture, the Learned Counsel for the Respondent/Accused brings it to the notice of this Court that a sum of Rs.1,00,000/- was deposited in the said account on 02.05.2014 and it was drawn on the same day and furthermore, there was a balance of Rs.554/- at the end of May 2014. As such, it is strenuously contended on behalf of the Respondent/Accused that the Petitioner/Appellant had opened the account and deposited the aforesaid cheque given by the Respondent to Vekatesappa as if the cheque was given to him on 20.06.2013

towards the purported loan borrowed in question. Apart from that, it is the case of the Respondent that the Petitioner/Appellant, who is a friend of Vekatesappa, used the aforesaid cheque given by the Respondent to the said Vekatesappa and in collusion with him, had filed a false complaint against the Respondent.

10.The Learned Counsel for the Respondent/Accused, by expatiating his submission, contends that many cheques from the cheque book containing the connected serial numbers were realised between the period from April 2012 and June 2012 and in fact, the evidence available on record, support the case of the Respondent that the Petitioner/Appellant knew Venkatesappa and that the cheque in question was given by him to the said Venkatesappa towards security etc.

11.In effect, the pith and substance of the argument advanced on behalf of the Respondent/Accused is that the First Appellate Court had come to a crystalline conclusion in its Appeal Judgment to the effect that the Petitioner/Appellant had not produced/shown any material to

fortify his suggestion that he had the necessary wherewithal/capacity to lend a heavy sum of Rs.5,00,000/- as hand loan and in reality, there was no possibility of giving the cheque in question to the Petitioner/Appellant/Complainant during the year 2013.

12.It is to be noted that the purpose of seeking 'Grant of Special Leave' to prefer an 'Appeal' before a Court of Law, as an avowed purpose viz., that vexatious/frivolous and otiose Appeals are not to be entertained by the concerned Court and thereby to avoid wastage of time. But, at the same time, one cannot brush aside a primordial fact that if the Judgment of the First Appellate Court or the trial Court, as the case may be, bristles with material irregularities and patent illegalities in the eye of Law, then, a Court of Law has to necessarily interfere, to prevent the miscarriage of Justice. Furthermore, if the concerned Court had delivered a Judgment either by misreading of evidence or if there is apparent/manifest error on record either on point of Fact or Law, then, a Court of Law can interfere. Even if the Judgment of the concerned Court is a capricious one and no reasonable man could arrive at such a conclusion taken by the concerned Court, then, in that

event also, the High Court can interfere by exercising its 'PLENTITUDE POWERS' so as to set at right the creeping in of errors to advance the cause of Justice.

13.As far as the present case is concerned, the trial Court in S.T.C.No.21 of 2014 had convicted the Respondent/Accused through its Judgment dated 19.09.2014 and imposed necessary punishments. However, the First Appellate Court in CrI.A.No.67 of 2014 had passed a 'Reversal Judgment' dated 21.07.2015 and consequently, acquitted the Respondent/Accused.

14.In this connection, this Court, after hearing the arguments of both sides and also taking note of the attendant facts and circumstances of the instant case, which float on the surface, is of the *prima facie* view that the 'Judgment of Acquittal' passed by the First Appellate Court in CrI.A.No.67 of 2014 dated 21.07.2015 requires detail rumination/consideration and in view of the fact that there is a sufficiency of cause projected on the side of the Petitioner/Appellant, at this stage, this Court is inclined to 'Grant Special Leave to prefer an Appeal' and allows the present Criminal Original Petition.

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15. Accordingly, the Criminal Original Petition is allowed, in above terms.

30.11.2016

Index : Yes / No

Internet : Yes / No

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