



CrI.O.P.No.25066 of 2023
in CrI.A.SR.No.53705 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2023

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.O.P.No.25066 of 2023
in CrI.A.SR.No.53705 of 2023

G.Suresh Babu

... Petitioner

Vs.

T.L.Srinath

... Respondent

Prayer: Criminal Original Petition filed under Section 378 of Criminal Procedure Code, to grant leave to the petitioner to file a criminal appeal against the judgment of the learned Judicial Magistrate-II, Walajapet in C.C.No.19 of 2016 dated 17.08.2023.

For Petitioner : Mr.L.Ramkumar

ORDER

This criminal original petition is filed to grant leave to the petitioner to file a criminal appeal against the judgment of the learned Judicial Magistrate-II, Walajapet in C.C.No.19 of 2016 dated 17.08.2023.



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2.The petitioner filed a private complaint against the respondent for the offence under Section 420 IPC in C.C.No.19 of 2016. During the trial, the petitioner examined himself as P.W.1, three other witnesses examined as P.W.2 to P.W.4 and Ex.P1 to Ex.P8 were marked. Ex.P1 is the promissory note and other exhibits are cheques, written memo, Advocate notice and P.W.4/Bank Manager's identity card.

3.The contention of the learned counsel for the petitioner is that the petitioner and the respondent are friends which is not in dispute and a loan of Rs.8,00,000/- was given to the respondent in the year 2013 is also not seriously disputed. When the respondent was examined under Section 240 Cr.P.C., he admits about the receipt of Rs.8,00,000/- but gives an explanation that he already paid Rs.5,00,000/- and seeks time for making payment of Rs.3,00,000/-. This being so, the Trial Court had given an different interpretation and stated that the loan was availed in the year 2014 and Ex.P1 was executed on 19.10.2015, the stamp paper is dated 21.03.2015 but the agreement is dated 19.10.2015 which is seven months thereafter and



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hence, had caused doubt over Ex.P1. He would submit that the respondent had not denied his signature, further P.W.1 had clearly stated in his evidence that for the loan availed in the year 2014 this agreement has been subsequently entered on 19.10.2015 and this fact has been narrated in the agreement which is not in dispute. He further submitted that P.W.2 and P.W.3, who are the witnesses to the document, have clearly corroborated the evidence of P.W.1. This being so, the Trial Court on its own had given a different finding as though Ex.P1 is not a reliable document, which is not proper. In view of the same, the judgment of the Trial Court is perverse.

4.After the hearing the learned counsel for the petitioner in length, this Court questioned the petitioner as to why he had not filed a petition under Section 372 Cr.P.C. before the Lower Appellate Court where normally appeal in such cases are filed.

5.Learned counsel for the petitioner submitted that in that event he may be permitted to file an appeal before the Sessions Court.



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6.In view of the same, the Registry is directed to return the case papers to the petitioner so that he can file it before the Sessions Court under Section 372 Cr.P.C. Since the present petition has been filed within the limitation period, the Sessions Court might not raise objections with regard to the limitation. The petitioner is directed to present the appeal before the Sessions Court within a period of thirty days from the date of receipt of case papers from the Registry.

7.With the above direction, the Criminal Original Petition stands disposed of.

09.11.2023

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
cse



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M.NIRMAL KUMAR, J.

cse

To

The Judicial Magistrate-II,
Walajapet

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