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Crl.O.P.Nos.929, 931 & 1034 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2024

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

Crl.O.P.Nos.929, 931 & 1034 of 2024

in

Crl.A.SR.Nos.1282, 1300 & 1321 of 2024

M/s.Celestium Financial,
Represented by POA Mr.Babu,
No.699, Avinashi Road, Coimbatore Branch,
Office at No.39, 5th Street, 1st Floor,
Chettinad Chambers, R.K.Salai,
Chennai – 600 004.

... Petitioner in all Crl.O.Ps

Vs.

1.T.Selvi ... Respondent in Crl.O.P.No.929 of 2024

2.A.Gunasekaran ... Respondent in Crl.O.P.No.931 of 2024

3.A.Poongothai ... Respondent in Crl.O.P.No.1034 of 2024

Prayer in Crl.O.P.Nos.929, 931 & 1034 of 2024 : Criminal Original Petitions filed u/s.378(4) of the Code of Criminal Procedure, seeking to grant special leave to appeals from the order of the acquittal in C.C.Nos.418 of 2018, 285 of 2019 and 417 of 2018 dated 07.11.2023 on the file of Judicial Magistrate, Fast Track Court (Magisterial Level) Alandur.



Crl.O.P.Nos.929, 931 & 1034 of 2024

Prayer in Crl.A.SR.Nos.1282, 1300 & 1321 of 2024 : Criminal Appeals filed under Section 378 of the Code of Criminal Procedure Code, to set aside the judgment passed by the learned Judicial Fast Track Court, (Magisterial Level) Alandur in C.C.Nos.418 of 2018, 285 of 2019 and 417 of 2018 dated 07.11.2023.

For Petitioner : Mr.G.Adithya Raj
(in all Crl.O.Ps)

COMMON ORDER

Since the issue involved in these petitions are interconnected, with the consent of the learned counsel appearing for the parties, these petitions were heard together and disposed of by this common order.

2. It is averred that the complainant is a partnership firm engaged in the business of finance for the past several years and in the course of business, the complainant extended financial assistance to the two accused introduced by another accused, namely Gnanasekaran, who was carrying on catering business under the name and style of M/s.R.R.Caterers and he was a customer of the complainant since 2014. The said Gunasekaran had also borrowed money from the complainant.



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In order to discharge the above stated loan amounts, the accused have issued respective cheques. As per the instructions of the accused, the complainant presented the same for collection on 30.10.2018 and 21.06.2019 respectively, however, the said cheques were returned with an endorsement as "Insufficient funds" on 31.10.2018 and 24.06.2019 respectively. Thereafter, the complainant sent legal notice on 12.11.2018 and 08.07.2019 to the accused intimating the dishonour of cheques and calling upon them to repay the aforesaid due under the said cheques. Even then, the accused have not come forward to repay the said amounts. Therefore, left with no other alternative, the complainant filed complaints as against the accused for an offence u/s 138 of the Negotiable Instruments Act (in short 'the N.I. Act') before the trial court in C.C.Nos.418 of 2018, 285 of 2019 and 417 of 2018. While so, after trial, the Court below had dismissed the said complaints filed by the complainant by acquitting the accused. Aggrieved over the same, the complainant/petitioner preferred the present petitions seeking to grant special leave to prefer appeals against the judgments dated 07.11.2023 in C.C.Nos.418 of 2018, 285 of 2019 and 417 of 2018.



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3. The learned counsel appearing for the petitioner submitted that the signature in the alleged cheques were admitted by the respective respondent/accused, who are the legal custodian of the cheques, whereas the Court below has failed to consider the facts of the case in a proper manner. He further submits that the petitioner will be put to much hardship, if the leave sought for is not granted. Hence, he prays for appropriate orders.

4. The learned counsel appearing for the respective respondent submitted that, by considering all the materials available on record, the court below has passed the impugned judgments, which are wholly sustainable and the same does not require any interference. Accordingly, he prays for dismissal of these petitions.

5. This Court perused the entire materials placed on record and the impugned judgments passed by the Court below.

6. It is the consistent ratio laid down that grant of leave is not a



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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 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 the prosecution 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 prospective.

7. Grant leave provided for u/s 378(4) is not an empty formality, but has been brought into the statute only to safeguard the interests of the persons accused of a crime, who have since been acquitted, as otherwise, they would be put through the rigours of continuous litigation even after their innocence has been accepted by the trial court.

8. A perusal of the entire records reveals that the petitioner



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engaged in the business of finance for several years. One of the accused namely Gnanasekaran, who is a customer of the petitioner and he availed several loans from the petitioner and he introduced the other two accused to the petitioner. It is claimed by the petitioner that the accused persons have borrowed loan amounts from the petitioner. However, in order to substantiate the same, no document was produced before the trial court that loan amounts were paid by the petitioner and bank statements were not produced before the trial court though the petitioner claims that the loan amounts were by transferred by way of bank transaction.

9. Further, it is seen that the said Gnanasekaran has lodged a complaint and FIR was registered on 09.02.2019 against one Rajesh, who is the former manager of the petitioner for misappropriating the amounts repaid by him towards the loans availed by him from the petitioner. Further, the other two accused have claimed that the said Gnanasekaran has availed loans in their name and they are not liable to pay any amount to the petitioner. It is seen that no document has been produced before the trial court by the petitioner to show the amount due to be repaid by the accused and the amount repaid by the accused. From the above, it is clear



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that there is no legally enforceable debt between the petitioner and the respective respondent/accused persons, which was properly appreciated by the trial court and dismissed the complaints. Therefore, the finding of the trial court cannot be interfered with.

10. Further, in order to grant leave, a case should be made out, but the present case bristles with infirmities which strikes at the root of the findings recorded. Further, in the case on hand, the petitioner, has not made out of 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 court below.

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



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M.DHANDAPANI, J.

sp

12. In the aforesaid circumstances, no case is made out by the petitioner for grant of leave and accordingly, these Criminal Original Petitions stand dismissed. Consequently, the Criminal Appeals are rejected at the SR stage itself.

12.06.2024

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

To

The Judicial Magistrate, Fast Track Court (Magisterial Level) Alandur.

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