



Crl.O.P.No.5713 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2024

CORAM:

THE HON'BLE **MR.JUSTICE M.DHANDAPANI**

Crl.O.P.No.5713 of 2023

in

Crl.A.SR.No.1384 of 2021

P.K.Devaraj

...Petitioner

Vs.

A.G.Shanmugam

...Respondent

Prayer in Crl.O.P.No.5713 of 2023: Criminal Original Petition filed under Section 378(4) of Code of Criminal Procedure to grant special leave to the petitioner to file the above appeal before this Hon'ble Court against the order judgment dated 28.09.2020 passed in STC.No.983 of 2011 on the file of the Judicial Magistrate Court No.II, Erode.

Prayer in Crl.A.SR.No.1384 of 2021: Criminal Appeal filed under Section 378 of Code of Criminal Procedure to set aside the judgment dated 28.09.2020 passed in STC.No.983 of 2011 on the file of the Hon'ble Judicial Magistrate Court No.II, Erode.

For Petitioner : Mr.C.Vasudevan

For Respondent : Notice not ready

ORDER

This Criminal Original Petition has been filed seeking to grant special leave to the petitioner to prefer an appeal against the judgment dated 28.09.2020 passed in STC.No.983 of 2011 on the file of the Judicial Magistrate Court No.II, Erode.



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2. The case of the petitioner is that, the respondent/accused is a known person to the petitioner/complainant. It is stated that on 06.12.2010, the respondent borrowed a sum of Rs.3,00,000/- as loan for his business purpose from the petitioner and promised to repay the same along with an interest at the rate of 12% and to discharge the same, he issued Post Dated Cheque (in short 'PDC') bearing No.919461 dated 29.01.2011 for a sum of Rs.3,00,000/- to the petitioner. It is the specific case of the petitioner that when the aforesaid cheque was presented for collection, it was dishonoured for the reason "Funds insufficient". Thereby, statutory notice was issued and since the cheque amount was not repaid back, the present complaint under Section 138 r/w 142 of the Negotiable Instruments Act came to be filed as against the respondent before the Court below in STC.No.983 of 2011. While so, after trial, the Court below had dismissed the said complaint by acquitting the respondent. Aggrieved over the same, the petitioner had preferred the present petition seeking grant of special leave to prefer an appeal before against the judgment dated 28.09.2020 made in STC.No.983 of 2011.

3 .Learned counsel for the petitioner submitted that the cheque was issued by the respondent, which stood dishonoured and the respondent has not disputed his signature in the cheque, which clearly shows that there is a legally enforceable debt, which has not been discharged by the respondent.



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However, all those facts have not been properly considered by the court below while passing the impugned order acquitting the respondent and, therefore, interference is warranted with the findings recorded by the court below.

4. Though notice was ordered by this Court on 13.03.2023, till date the petitioner has not taken any effective steps to serve notice on the respondent. Considering the period of pendency of this petition, this Court is inclined to dispose of the same based on the materials available on record.

5. Heard learned counsel for the petitioner and perused the entire materials placed on record and the impugned order passed by the Court below.

6. It is the consistent ratio laid down that grant of leave is not a matter of right; rather it is the edifice on which the liberty of the person, who has seen 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



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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. It is the case of dishonour of cheque given by the accused to the complainant towards discharge of legally enforceable debt due and payable by the accused for which the complaint was filed under Section 138 of Negotiable Instruments Act which was dismissed.

9. It is not in dispute that the dishonoured cheque belongs to the accused as he has not disputed his signature in the cheque. It is alleged by the petitioner that, at the time of lending money, the respondent was running a shop in the name and style of Rama Coffee works and it is the respondent who gave the said address and thereby the legal notice was sent to the said



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address and only for business purpose, the respondent had borrowed money from the petitioner. However, the trial court had dismissed the complaint on the ground that on the crucial date, the shop, which the respondent is alleged to be running was not in existence.

10. On the other hand, it is the case of the respondent that, the respondent was running a shop in the name and style of Rathna Coffee works and Stationery from the year 2008 and was running the same only till 08.06.2010, since the respondent's shop and other encroachments in the S.No.85/B2 were removed on 10.06.2010 for expansion of road for the purpose of holding Semmozhi Manadu and the same is evident from Ex.D2, reply under RTI Act and thereby no necessity arises for the respondent to borrow money from the petitioner and he does not know the petitioner and he has specifically stated that on 04.05.2011, he borrowed a sum of Rs.1,20,000/- from one Kannan, who was running KMK Finance, for which the said Kannan, already deducted Rs.20,000/- towards interest and the respondent had paid 11 installments and Rs.84,000/- was paid in one installment and he totally paid a sum of Rs.92,400/- and the balance amount to be paid by the respondent is only Rs.27,600/- and that too to the said Kannan and not to the petitioner. Further, the disputed cheque bearing



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No.919461 along with another cheque bearing No.919462, two pronotes and signed blank documents were given by the respondent to the said Kannan at the time of borrowing money, which is misused and the petitioner was set up by the said Kannan and the entire complaint filed by the petitioner is a false one. Further it is the major contention of the respondent that even though the signature in the subject cheque was admitted by him, he has clearly stated that the subject cheque was not issued to the petitioner/complainant.

11. Further, it is claimed by the petitioner that, he does not know the family details of the respondent and his financial status. On perusal of entire records, it reveals that both the parties have never disclosed in their evidence about the date on which the said cheque was issued and the purpose as well as failed to produce supporting document. Further, it reveals that the handwriting in the signature and the details filled in the cheque are different. Thus, this Court finds that the legal binding between the parties have not been established.

12. Further there is no material to show the payment made to the accused so as to claim that the cheques were issued which stood dishonoured and, therefore, there is a legally enforceable debt which subsists. Thus, the



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trial court, on appreciating the materials available on record, had rightly dismissed the petitioner's complaint on the ground of limitation holding that the petitioner has failed to establish that there was a legally enforceable debt for which the dishonoured cheques were issued by the accused and therefore, the said finding of the trial court cannot be interfered with.

13. 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 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.

14. 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 respondent is concerned, who has been acquitted through a well considered judgement passed by the court below.



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15. In the aforestated circumstances, no case is made out by the petitioner for grant of leave and accordingly, this Criminal Original Petition stands dismissed. Consequently, the Criminal Appeal is rejected at the SR stage itself.

23.04.2024

skt

NCC : Yes/No
Internet : Yes/No
Speaking order : Yes/No

To

The Judicial Magistrate Court No.II,
Erode.



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M.DHANDAPANI, J.

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