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CrI.O.P.No.1894 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.06.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**CrI.O.P.No.1894 of 2024
in CrI.A.No.1351 of 2023**

K.Saroja

... Petitioner

Vs.

C.Veerapandiyan

... Respondent

PRAYER :

Criminal Original Petition filed under Section 378(4) of Cr.P.C, to grant special leave to the petitioner to prosecute the Criminal Appeal before this court against the Judgment of acquittal dated 07.08.2018 made in S.T.C.No.652 of 2015 on the file of the Judicial Magistrate, Vedaranyam, Nagapattinam District.

For Petitioner : Mr.R.Muruga Baharathi

ORDER

Assailing the order of acquittal dated 07.08.2018 passed in S.T.C.No.652 of 2015 by the learned Judicial Magistrate, Vedaranyam, Nagapattinam District, the present petition has been filed by the petitioner seeking leave to the petitioner to prosecute the Criminal Appeal.

2. A perusal of the materials available on record reveal that the appeal



had been filed without seeking the leave of this Court, which has prompted an order for filing the leave petition. However, by then the appeal was numbered by this Court. However, as per the provisions of the Criminal Procedure Code, it is imperative for this Court to ascertain whether grant of leave is to be given for filing the appeal and, therefore, in that view of the matter, this Court is inclined to deal with the grant leave petition and the outcome of the petition would decide whether this Court would take up the appeal or not.

3. The case of the petitioner is that the respondent borrowed hand loan from the petitioner for his son's education and his Real Estate business to the tune of Rs.40,00,000/- on 20.01.2015. Thereafter, the respondent issued a cheque bearing No.651847 dated 28.02.2015 in favour of the petitioner at the time of receiving the said amount. In spite of repeated demands, the respondent has not come forward to pay the legally enforceable debt. Hence, the said cheque was presented for collection with the petitioner's banker, but the same was returned for the reason "Funds insufficient" on 03.03.2015. Hence, the petitioner issued a legal notice dated 11.03.2015 demanding the repayment and the same was served on 17.03.2015, but the respondent has not sent any reply to the petitioner. Moreover, the respondent failed to pay the cheque amount within a period of 15 days from the date of receipt of legal notice. Hence, the



complaint.

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4. 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, the petitioner's power of Attorney was examined as P.W.1 and Exs.P1 to P5 were marked. On the side of respondent, the respondent was examined as D.W.1 and his son was examined as D.W.2 and no documents were marked on the side of the respondent. 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 prosecute the appeal.

5. The 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.



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

7. 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 respondent of a crime rests and where a person, who had been respondent 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 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.

8. 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 respondent 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 Court below.

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9. With the above in mind, a perusal of the materials on record reveal that the respondent had denied that the cheque was given towards the discharge of a legally enforceable debt.

10. A perusal of the order passed by the Court below reveals that upon the respondent rebutting the presumption imposed u/s 139 of the Negotiable Instruments Act, the petitioner was bound to establish that the cheque, which has since been dishonoured, was given for the purpose of discharging a legally enforceable liability. The learned Trial Judge framed several issues and answered whether legally enforceable debt is established between the petitioner's father and the respondent/accused that the loan amount of Rs.40,00,000/- was advanced. For which, the respondent issued a cheque on 28.02.2015, but the same has been returned for the reason 'insufficient funds'. Moreover, there is no documents except Ex.P2-Cheque was filed before the Trial Court to prove that the respondent has borrowed the loan amount from the petitioner. In the present case, except endorsement, no other documentary proof was filed before the Trial Court that the cheque was issued by the respondent to discharge the legally enforceable debt. Hence, the petitioner has not proved his case beyond the reasonable doubt.

11. The Trial Judge also held that the cheque issued for a time-barred



debt would not fall within the definition of legally enforceable debt', which is the essential requirement for a complaint under Section 138 of the NI Act. Thus, it is decided that the petitioner has failed to fulfil the main ingredients in order to punish the respondent under section 138 of the N.I.Act that the cheque has been issued for a legally enforceable debt. In the case in hand, the cheque has been issued for a time-barred debt and it is dishonoured, hence, the respondent cannot be convicted under section 138 of the Negotiable Instruments Act and properly appreciating the above, the Court below has negated the contention of the petitioner, which does not suffer any illegality or unreasonableness and, therefore, the same does not require any interference at the hands of this Court.

12. 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.

13. 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 judgment passed



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14. In the aforesaid circumstances, no case is made out by the petitioner for grant of leave and, accordingly, this Criminal Original Petition is dismissed. In view of the negation of leave to file appeal, the appeal, which has been filed and numbered erroneously at the outset stands rejected.

10.06.2024

NCC : Yes / No

Index : Yes / No

Speaking Order : Yes / No

msv

To

Judicial Magistrate, Vedaranyam, Nagapattinam District.

M.DHANDAPANI, J.

msv



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