



Crl.O.P.No.4395 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.04.2024

CORAM:

THE HONOURABLE **MR. JUSTICE M.DHANDAPANI**

Crl.O.P.No.4395 of 2023

in

Crl.A.Sr.No.3005 of 2023

C.U.Vijayavarma

...Petitioner

Vs.

Karthikesan

...Respondent

Prayer in Crl.O.P.No.4395 of 2023: Criminal Original Petition filed under Section 482 Cr.P.C. to grant leave to the petitioner to file appeal against the order of acquittal dated 19.12.2022 made in STC.No.193 of 2021, on the file of the Judicial Magistrate-II, Chidambaram.

Prayer in Crl.A.Sr.No.3005 of 2023: Criminal Appeal filed under Section 378(4) Cr.P.C. to set aside the order of acquittal dated 19.12.2022 passed by the learned Judicial Magistrate-II, Chidambaram in STC.No.193 of 2021.

For Petitioner : Mr.D.Baskar

For Respondent : Notice not ready



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ORDER

WEB COPY Assailing the order of acquittal dated 19.12.2022 passed in STC No.193/2021 by the Judicial Magistrate No.II, Chidambaram, the present petition has been filed by the petitioner seeking leave to file appeal.

2. It is the case of the petitioner that the petitioner and the respondent are friends and the respondent had borrowed a sum of Rs.6,02,000/- in several instalments till end of January, 2015 and as the said amount was not repaid, repeated demands were made and towards the discharge of the liability, the respondent issued cheque No.402051 dated 18.12.2020 drawn on Karnataka Bank, Puducherry Branch. When the petitioner presented the cheque for encashment through his banker Axis Bank, Chidambaram Branch on 28.12.2020, the same was returned with endorsement “Insufficient Funds” on 29.12.2021. Therefore, the petitioner caused a legal notice to the respondent on 11.01.2021, which was received by the respondent but no reply was sent by the respondent. Therefore, the petitioner was constrained to file the complaint.



3. 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, P.W.1 and Exs.P-1 to P-6 were marked. On the side of the respondent neither any oral evidence was adduced nor any documents were marked. 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 appeal.

4. 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.



WEB COPY 5. This Court gave its anxious consideration to the submission advanced by the learned counsel for the petitioner and perused the materials available on record.

6. 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 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 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.

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 courts below.

8. With the above in mind, a perusal of the materials on record reveals that the respondent had not denied his signature in the cheque and also had not denied that the cheque does not belong to him. However, the whole case of the respondent is that whether the cheque is issued for the purpose of discharging the liability in respect of a legally enforceable debt as according to the respondent, the amounts, which are alleged to have been paid by the petitioner to the respondent does not tally with the amount which is reflected on the cheque, which is claimed to be the liability of the respondent to the petitioner in respect of a legally enforceable debt.

9. The court below has premised its finding not merely on technicalities, as has been put forth by the petitioner, but it is more on sound logic. The trial court, based its findings on the deposition of the petitioner, P.W.1, who had deposed that he gave the amount of Rs.7,00,000/- by way



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of two instalments in January, 2015, but the cheque in question has been given in respect of a time barred debt as the present complaint has been filed only on 10.02.2021. The court below, placing reliance on the decisions of the Apex Court and this Court with regard to time barred debts, held that the cheque in issue was issued beyond a period of three years from the date of borrowal of money and, therefore, it is clearly a time barred debt and any cheque issued for discharging a time barred debt would not fall within the contours of Section 138 of the NI Act, as the same cannot be brought within the ambit of a legally enforceable debt. The court below further held that through Ex.P-5. Though the petitioner claims that he lent a further sum of Rs.1.25 Lakhs, as evidenced through Ex.P-5 and in all totalling to Rs.7,27,500/- of which the respondent paid a sum of Rs.27,500/- on 5.4.2018 which stands established through Ex.P-6, however, the said materials have not been evidenced in the statutory notice dated 11.01.2021 and, therefore, the same cannot be the basis to hold that the complaint is not time barred, as the present materials have been invented for the purpose of overcoming the time barred claim. Relying upon the deposition of P.W.1, both in chief and cross, the court below held that at the earliest point of time



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in the statutory notice, the aforesaid details having not been given, the same cannot form the basis for the petitioner to hold the alleged liability to be a legally enforceable debt for the purpose of attracting the provisions of Section 138 of the NI Act. Therefore, in the absence of any material to establish that the claim is not time barred and that there was a legally enforceable debt subsisting, towards the discharge of which the cheque was issued, which had been returned unpaid, the court below was fully justified in rejecting the complaint filed by the petitioner.

10. 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.

11. No infirmities or other materials are placed which necessitates relook into the findings recorded by the courts below and granting leave to



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appeal would be nothing but a travesty of justice insofar as the respondents are concerned, who have been acquitted through a well considered judgment passed by the court below.

12. In the aforestated circumstances, no case is made out by the petitioner for grant of leave and, accordingly, this criminal original petition is dismissed. Consequently, the criminal appeal is rejected at the SR stage itself.

23.04.2024

skt

Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No

To

The Judicial Magistrate-II,
Chidambaram.



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M.DHANDAPANI, J.

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