



WEB COPY



CRL.O.P.No.11031 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.06.2024

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

CRL.O.P.No.11031 of 2024

in

Crl.A.Sr.No.7047 of 2024

R.Madhavan

.. Petitioner

Vs.

A.Mohamed Sulthan

... Respondent

Prayer in Crl.OP.No.11031 of 2024: This Criminal Original Petition has been filed under Section 378(4) of Cr.P.C. to grant leave to file the criminal appeal against the judgment of acquittal passed in S.T.C.No.50 of 2022 dated 20.06.2023 by the Fast Track Court at Magisterial Level, Tiruvallur.

Prayer in Crl.A.SR.No.7047 of 2024: This Criminal Appeal has been filed under Section 378 of Cr.P.C. to set aside the judgment of acquittal passed in S.T.C.No.50 of 2022 dated 20.06.2023 by the Fast Track Court at Magisterial Level, Tiruvallur and convict the accused in the manner known to law.

For Petitioner : Mr.K.Sarathkumar



CRL.O.P.No.11031 of 2024

ORDER

WEB COPY

Assailing the judgment of acquittal dated 20.06.2023 passed by the Fast Track Court at Magisterial Level, Tiruvallur in C.C.No.126 of 2012, the present petition has been filed by the petitioner seeking leave to file appeal.

2.It is the case of the petitioner that in order to meet out the family expenses of the respondent, he obtained Rs.5 Lakhs from the petitioner by mortgaging his car and he issued a cheque on 9.12.2019 bearing cheque No.237577 for a sum of Rs.5 Lakhs to discharge the said liability. However, the said cheque, upon deposit on 04.03.2022, was returned by the bankers on 05.03.2022 on the ground that “payment stopped by the drawer”. Therefore, the petitioner caused a legal notice to the respondent on 15.03.2022, 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



CRL.O.P.No.11031 of 2024

WEB COPY

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 was examined and Exs.P-1 to P-5 were marked. The respondent examined D.W.s.1 and 2 and marked Exs.D-1 to D-5. 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.

5. This Court gave its anxious consideration to the submission advanced by the learned counsel for the petitioner and perused the



CRL.O.P.No.11031 of 2024

WEB COPY

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



CRL.O.P.No.11031 of 2024

WEB COPY

their innocence has been accepted by the courts below.

8. 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. In fact, the respondent had denied that the cheque was given towards the discharge of a legally enforceable debt. It is the case of the respondent that he has borrowed only a sum of Rs.2,00,000/- in the month of November 2019 by mortgaging his car, in which Rs.20,000/- was deducted by the complainant and lent only a sum of Rs.1,80,000/- and it is also the contention of the respondent that the respondent had repaid a sum of Rs.52,000/- to the complainant, in order to substantiate the same, the respondent has also adduced Exs.D-2 and D-3, which are the photocopy of the receipts and the bank statement of the said transaction of Rs.52,000/-, but the complainant suppressed the payment made by the accused.

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. A perusal of the order of the court below reveals that Ex.D4, C.S.R copy, shows that the petitioner has given a police complaint before Thirumullaivoyal police station



CRL.O.P.No.11031 of 2024

WEB COPY

on 13.02.2022 stating that the petitioner threatened the respondent that he would sell the car of the respondent and thereby obtained the signature in a blank cheque, stamp paper and green paper. There is no material evidencing payment of loan to the respondent and also the persons, in whose presence the amount was given to the respondent. When the respondent has denied issuing the cheque to the petitioner for the purpose of discharging a legally enforceable debt, a duty is cast on the petitioner to prove the disbursement of loan to the respondent. Further, there is no material which evidences the financial capacity of the petitioner to advance a loan of Rs.5 Lakhs to the respondent. In the absence of any material to prove the loan transaction between the petitioner and the respondent, the claim of the petitioner that there is a legally enforceable debt towards the discharge of which the cheque was given by the respondent is wholly unfathomable.

10. Therefore, in the absence of any material to establish the financial capacity of the petitioner and also establish that there is a legally enforceable debt, 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.



CRL.O.P.No.11031 of 2024

WEB COPY

11. 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.

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

13. 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.

11.06.2024

Index: Yes/No
Internet: Yes/No
rap



WEB COPY



CRL.O.P.No.11031 of 2024

M.DHANDAPANI , J.

rap

To

Fast Track Court at Magesterial Level, Tiruvallur.

CRL.O.P.No.11031 of 2024

in

CrI.A.Sr.No.7047 of 2024

11.06.2024