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Crl.O.P.No.10828 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.06.2024

CORAM:

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Crl.O.P. No.10828 of 2024

in

Crl.A.Sr.No.7240 of 2024

G.Balaji

...Petitioner

Versus

M.V.Ramesh

...Respondent

Prayer in Crl.OP.No.13793 of 2024: This Criminal Original Petition has been filed under Section 482 of Cr.P.C. to grant special leave to the petitioner to prefer an appeal against the respondent against the acquittal order made in C.C.No.1329 of 2018, dated 23.09.2022 on the file of learned IV Fast Track Metropolitan Magistrate Court, Chennai.

Prayer in Crl.A.SR.No.7240 of 2024: This Criminal Appeal has been filed under Section 378 of Cr.P.C. to set aside the judgment of acquittal passed by on the learned IV Fast Track Metropolitan Magistrate Court, Chennai in C.C.No.1329 of 2018 dated 23.09.2022 and punish the respondent / accused for the said charges.



Crl.O.P.No.10828 of 2024

For Petitioner : Mr.N.Sivashankar

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ORDER

Assailing the order of acquittal dated 30.11.2022 passed in C.C. No.154/2016 by the Judicial Magistrate, Fast Track Court, MC, the present petition has been filed by the petitioner seeking leave to file appeal.

2. It is the case of the petitioner that the respondent had sought a sum of Rs.4,00,000/- as hand loan from the petitioner / complainant for the purpose of development of his vegetable business. In order to repay the said amount, the respondent issued a cheque dated 31.01.2018 in favour of the petitioner. However, the said cheque, upon deposit was returned by the petitioner's bankers on 31.01.2018 on the ground of insufficient funds. Therefore, the petitioner caused a legal notice to the respondent on 14.02.2018. Since the said amount was not repaid, 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



Crl.O.P.No.10828 of 2024

WEB COPY

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-4 were marked. Neither any witness nor any documents were marked on behalf 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 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 materials available on record.



Crl.O.P.No.10828 of 2024

WEB COPY

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 denied that the cheque was given towards the discharge of a



Crl.O.P.No.10828 of 2024

legally enforceable debt.

WEB COPY

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 has doubted the version projected by the petitioner. Further, the court below has held that the petitioner has not proved his financial capacity to give a loan of Rs.4 Lakhs at one stroke. Further, there is no material to show that a sum of Rs.4 Lakhs was available with the petitioner and that it was given to the respondent as a loan. There is no document to prove that there was a loan transaction between the petitioner and the respondent. In fact, it is the case of the respondent that the cheque was given as security for the past loan, which was misused by the petitioner.

10. It is seen that there is no material evidencing the payment of Rs.4 Lakhs as loan to the respondent. 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.10828 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 aforesaid 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.

18.06.2024

Index: Yes/No
Internet: Yes/No
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To



Crl.O.P.No.10828 of 2024

The IV Fast Track Metropolitan Magistrate Court, Chennai

WEB COPY



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Crl.O.P.No.10828 of 2024

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Crl.O.P. No.10828 of 2024
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Crl.A.Sr.No.7240 of 2024

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