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CrI.O.P.No.13585 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.06.2024

CORAM:

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

CrI.O.P.No.13585 of 2024
in CrI.A.SR.No.6672 of 2024

Natanasababathi

... Petitioner

Vs.

Balu

... Respondent

Prayer: Criminal Original Petition filed under Section 378 (4) of Cr.P.C., to grant special leave to prosecute the appeal before this Court against the order of acquittal dated 20.09.2023 made in S.T.C.No.39 of 2020 on the file of the Judicial Magistrate, Fast Track Court, Kallakurichi.

For Petitioner : Mr.D.Boopal

ORDER

Assailing the order of acquittal dated 20.09.2023 made in S.T.C.No.39 of 2020 on the file of the Judicial Magistrate, Fast Track Court, Kallakurichi, 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 has borrowed a sum of Rs.10,00,000/- on 01.10.2019 for settling his debt and he has issued a cheque bearing No.027111 dated 01.10.2019 with the account maintained by the



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respondent with the Corporation Bank for a sum of Rs.10,00,000/- and promised to return it within two months. The respondent has not returned the amount in time. Hence, the petitioner presented the cheque for collection on 13.12.2019 with his banker and the same was returned as "Funds Insufficient" . Thereby, the petitioner sent a legal notice on 28.12.2019 to the respondent and he was received the same on 31.12.2019. He did not reply nor comply with the notice. Hence, the petitioner has filed a complaint before the learned Judicial Magistrate under Section 138 of NI Act and the same was taken on file in STC.No.39 of 2020.

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, he examined P.W.1 and PW2 .and Exs.P-1 to P4 were marked. On the side of the respondent, two witnesses were examined and one document was 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. Challenging the order of acquittal, the appellant has



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filed the present revision before this Court.

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4. Learned counsel appearing for the petitioner submitted that admittedly the respondent borrowed a sum of Rs.10,00,000/- on 01.10.2019 and issued a cheque (P1) in favour of the petitioner. On 08.06.2020, the respondent transferred a sum of Rs.5,00,000/- to the petitioner through online for purchasing paddy. That amount is not related to the 138 complaint. The trial Court has wrongly understood that the DW2 is working as an Accountant with the petitioner. Based on the deposition of the DW2 that a sum of Rs.5,00,000/- has been given by the respondent to the petitioner, the trial Court has given weightage to the witness of DW2 and acquitted the accused, which is not sustainable.

5. The learned counsel further submitted that the presumption u/s 139 falls heavily on the respondent and he has admitted the signature found in the cheque. However, without properly appreciating the above, the court below has acquitted the respondent, which deserves interference at the hands of this Court.

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 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.

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 person 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.



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9. With the above in mind, a perusal of the materials on record reveal that admittedly, as per the complaint, the respondent has borrowed a sum of Rs.10,00,000/- from the petitioner on 01.10.2019, for which, P1/cheque was issued on the same day. When the said cheque was presented for collection on 13.12.2019, the same was returned as insufficient funds. The complaint has been filed on 12.02.2020. It is equally undisputed fact that after lapse of four months, another sum of Rs.5,00,000/- was transferred by the respondent to the petitioner on 08.06.2020. Though the petitioner claimed that for purchase of paddy from the petitioner, the respondent paid a sum of Rs.5 lakhs on 08.06.2020, if it is so, the petitioner has to file a invoice and account details before the trial Court to prove that it is an independent transaction. The petitioner has not proved the same. Further, the respondent has examined DW2, who is working as an Accountant with the petitioner and he deposed that he used to collect the amounts from the petson who are due to the petitioner. In that process, DW2 has admitted that he has collected a sum of Rs.5,00,000/- by way of cash from the respondent and prior to the 138 complaint, another sum of Rs.5,00,000/- was transferred to the petitioner's account. The petitioner has not approached the trial Court with clean hands and all the facts was elaborately



considered by the trial Court. 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 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 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



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for grant of leave and, accordingly, this criminal original petition is dismissed.

Consequently, the criminal appeal is rejected at the SR stage itself.

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Index:Yes/No

Speaking/Non speaking order
rli

To

The Judicial Magistrate, Fast Track Court, Kallakurichi.



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M.DHANDAPANI . J,

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