



WEB COPY



CrI.O.P.No.3611 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.04.2024

CORAM:

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

CrI.O.P.No.3611 of 2023
in
CrI.A.SR.No.63217 of 2022

N.Manickam

...Petitioner

Vs.

Velmurugan

...Respondent

Prayer in CrI.O.P.No.3611 of 2023: Criminal Original Petition filed under Section 378(4) Cr.P.C. to grant leave to the petitioner to file appeal against the judgment in C.C.No.553 of 2016 dated 17.10.2022 before the Judicial Magistrate No.1, Coimbatore.

Prayer in CrI.A.SR.No.63217 of 2022: Criminal Appeal filed under Section 378(4) Cr.P.C. to set aside the order passed in C.C.No.553 of 2016 dated 17.10.2022 before the Judicial Magistrate No.1, Coimbatore.

For Petitioner : Mr.M.Saravanakumar

For Respondent : Notice not ready



CrI.O.P.No.3611 of 2023

ORDER

WEB COPY This Criminal Original Petition has been filed to grant leave to the petitioner to the petitioner to file appeal against the judgment dated 17.10.2022 passed in C.C.No.553 of 2016 before the Judicial Magistrate No.1, Coimbatore.

2. The case of the petitioner is that, the petitioner/complainant and the respondent/accused are known to each other and on such acquaintance, the respondent borrowed a sum of Rs.4,50,000/- from the petitioner and he promised to repay the same within a period of four months with an interest at the rate of 1.5% per month and had also executed loan undertaking agreement and a promissory note in favour of the petitioner on 01.07.2015. However, the respondent had neither paid the interest nor the principle amount. Thereafter, on continuous demands made by the complainant, the accused issued a cheque bearing No.994071 on 30.10.2015 for a sum of Rs.4,77,000/-, in discharge of the above liability. When the said cheque was presented for collection, the same was returned with endorsement 'Funds Insufficient'. Thereby, the petitioner sent a legal notice to the respondent on



CrI.O.P.No.3611 of 2023

29.11.2015, which evoked no response. Therefore, left with no other alternative, the complaint was filed by the petitioner for an offence u/s 138 of the Act before the trial court in CC.No.553 of 2016. However, the trial court, had mechanically dismissed the said complaint and acquitted the respondent. Aggrieved by the same, the petitioner has filed the present petition seeking grant of special leave to prefer an appeal against the judgment dated 17.10.2022 made in C.C.No.553 of 2016.

3. Learned counsel appearing for the petitioner submitted that the cheque was issued by the respondent, which stood dishonoured and the respondent has not disputed his signature in the cheque, which clearly shows that there is a legally enforceable debt, which has not been discharged by the respondent. It is the further submission of the learned counsel that, in order to disprove the case of the petitioner no witnesses were examined and no documents were marked on the respondent side. However, all those facts have not been properly considered by the court below while passing the impugned order acquitting the respondent. Further, the petitioner lent money to the respondent to meet his urgent family needs, while so, the trial held



Crl.O.P.No.3611 of 2023

against the petitioner merely because he lent money to the respondent despite knowing the financial position of the respondent, which is wholly unsustainable and therefore, interference is warranted with the findings recorded by the court below.

4. Though notice was ordered by this Court on 06.03.2023, the petitioner has not taken any effective steps to serve notice on the respondent. Considering the pendency of this petition, this Court is inclined to dispose of the same based on the materials available on record.

5. This Court heard the learned counsel for the petitioner and perused the materials available on record.

6. It is the consistent ratio laid down that grant of leave is not a matter of right; rather it is the edifice on which the liberty of the person, who has seen 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 the prosecution 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 prospective.

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 trial court.

8. It is the case of dishonour of cheque given by the accused to the complainant towards discharge of legally enforceable debt due and payable by the accused for which the complaint was filed under Section 138 of Negotiable Instruments Act which was dismissed.

9. It is not in dispute that the dishonoured cheque belongs to the accused as he has not disputed his signatures in the cheque. The alleged date



CrI.O.P.No.3611 of 2023

of borrowing is in the year 2015 and in order to acknowledge the loan, the promissory note and loan undertaking agreement were executed on the same day. A perusal of the documents placed on record particularly the promissory note, the cheque and the loan undertaking agreement reveals that, the alleged borrowed amount and the amounts mentioned in the above said documents are different and in the cheque it is mentioned as Rs.4,77,000/- and in the loan undertaking agreement it is mentioned as Rs.4,57,000/- and the alleged borrowed amount is Rs.4,50,000/-. When the same was questioned by the lower court, the petitioner deposed that the amount mentioned in the loan undertaking agreement includes interest and travelling expenses. Even as per the contention of the petitioner, if the interest is at the rate of 1.5% per month, the same comes to around Rs.6,750/-. If the amount is alleged to have been borrowed during July 2015 and the cheque is dated 30.10.2015, the interest for four months comes to around Rs.27,000/- and said the amount does not tally with the amount mentioned in the loan undertaking agreement marked as Ex.P3.



WEB COURT

10. Further, it was alleged that on the date of the loan transaction itself, i.e., 01.07.2015, the Ex.P3 was executed by the accused to and in favour of the petitioner in the presence of the notary public, who was examined as PW3, who clearly deposed that he is not aware of any money transactions and he only witnessed the affidavit alone. Further, the petitioner did not choose to examine one Mayilsamy, who witnessed the execution of Ex.P3, which itself creates various doubts in the case and contention of the petitioner.

11. When there is gross variance with regard to the loan obtained and the cheque issued, it is incumbent upon the petitioner to establish that the cheque was issued towards discharge of a legally enforceable debt, which the petitioner has miserably failed to establish.

12. Further there is no material to show the payment made to the accused so as to claim that the cheque was issued which stood dishonoured and, therefore, there is a legally enforceable debt which subsists. Thus, the trial court, on appreciating the materials available on record, had rightly



dismissed the petitioner's complaint holding that the petitioner has failed to establish that there was a legally enforceable debt for which the dishonoured cheque was issued by the accused and therefore, the said finding of the trial court cannot be interfered with.

13. In order to grant leave, a case should be made out , but the present case bristles with infirmities which strikes at the root of the findings recorded. Further, 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 court below.

14. 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 judgement passed by the court below.



Crl.O.P.No.3611 of 2023

WEB COPY 15. In the aforestated circumstances, no case is made out by the petitioner for grant of leave and accordingly, this Criminal Original Petition stands 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

Judicial Magistrate No.1,
Coimbatore.



WEB COPY



Crl.O.P.No.3611 of 2023

M.DHANDAPANI, J.

skt

Crl.O.P.No.3611 of 2023
in
Crl.A.SR.No.63217 of 2022

23.04.2024