



CRL.O.P.No.13793 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2024

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

CRL.O.P.No.13793 of 2023

in

Crl.A.Sr.No.6303 of 2023

Padmavathy

.. Petitioner

Vs.

A.Bhuvaneswari

... Respondent

Prayer in Crl.OP.No.13793 of 2023: This Criminal Original Petition has been filed under Section 482 of Cr.P.C. to grant special leave to file the appeal against the judgment of acquittal passed in C.C.No.154 of 2016, dated 30.11.2022 on the file of the Fast Track Court No.I, Coimbatore.

Prayer in Crl.A.SR.No.6303 of 2023: This Criminal Appeal has been filed under Section 378 of Cr.P.C.against the judgment of acquittal passed in C.C.No.154 of 2016 dated 30.11.2022 on the file of Fast Track Court No.1, Coimbatore.



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For Petitioner : Mr.C.Deivasigamani

For Respondent : Ms.S.Akila

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 petitioner and the respondent are friends and for the purpose of personal household expenses, during the month of August, 2014, the respondent had sought a loan of Rs.7,50,000/- promising to repay the same within three months, the petitioner lent a sum of Rs.7,50,000/- to the respondent on 13.08.2014. Since the respondent did not pay the same within the time promised, the petitioner made repeated demands and on 8.2.2015, the respondent issued a cheque bearing No.927160 dated 21.04.2015 for a sum of Rs.7,50,000/-. However, the said cheque, upon deposit was returned by the petitioner's bankers on 03.06.2015 on the ground of



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insufficient funds. Therefore, the petitioner caused a legal notice to the respondent on 15.6.2015, which was received by the respondent on 16.6.2015, 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 was examined and Exs.P-1 to P-4 and P-6 were marked. Further, during cross examination, Ex.P-5 was marked. The respondent examined herself as D.W.1 and marked Exs.D-1 and D-2. 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



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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 the respondent 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



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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 reveal that the respondent had denied that the cheque was given towards the discharge of a legally enforceable debt. In fact, it is the case of the respondent that the cheques were given as security, which was misused by the petitioner. The respondent has also rebutted the presumption by evidencing repayment of the amount, which he had obtained from the petitioner for his business purposes.



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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 based its findings on the deposition of D.W.1, who has deposed that the amount received as loan from the petitioner was returned towards which Exs.D-1 and D-2 were marked. The respondent has claimed that the cheque given towards security was misused by the petitioner in connivance with others. Further, the court below has held that the petitioner has not proved the manner in which the amount of Rs.7.5 Lakhs was given to the respondent and also the persons, in whose presence it was given. There is no iota of evidence to show as to the loan amount being advanced to the respondent.

10. It is seen that there is no material evidencing the payment of Rs.7.5 Lakhs as loan to the respondent. It is the specific case of the respondent that the amount of Rs.7.5 Lakhs has been returned but the cheques, which were given as security were not returned by the petitioner and it was misused. In the absence of any material to establish the advancement of loan to the respondent and also establish that there is a



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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.

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



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petitioner 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
Internet: Yes/No
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The Fast Track Court No.I, Coimbatore.



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M.DHANDAPANI , J.

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