



Crl.O.P.Nos.17056 & 16025 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2024

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

Crl.O.P.Nos.17056 & 16025 of 2024
in
Crl.A.SR.Nos.9016 & 9017 of 2024

A.Velmurugan

... Petitioner in both petitions

Vs.

G.Lucas

... Respondent in both petitions

Prayer in Crl.O.P.Nos.17056 & 16025 of 2024 : Criminal Original Petitions filed u/s.378(4) of the Code of Criminal Procedure, seeking to grant leave to prefer Criminal Appeal against Judgment dated 25.09.2023 passed by the Judicial Magistrate, Fast Track Court (ML), Thiruchengode in S.T.C.Nos.536 and 275 of 2017.

Prayer in Crl.A.SR.Nos.9016 & 9017 of 2024 : Criminal Appeals filed under Section 378 of the Code of Criminal Procedure Code, to set aside the Judgment dated 25.09.2023 passed by the Judicial Magistrate, Fast Track Court (ML), Thiruchengode in S.T.C.Nos.536 and 275 of 2017.

For Petitioner : Mr.L.Mouli
(in both petitions)



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COMMON ORDER

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These Criminal Original Petitions have been filed seeking to grant leave to the petitioner to file appeal against the impugned judgments passed by the learned Judicial Magistrate, Fast Track Court (ML), Thiruchengode in S.T.C.Nos.536 and 275 of 2021 dated 25.09.2023.

2. It is averred that the petitioner/complainant and the respondent/accused are known to each other very well. On that basis, for the purpose of meetin out his urgent business expenses, on 03.10.2016 and 10.10.2016, the accused borrowed a sum of Rs.68,250/- and Rs.3,00,000/- as hand loan from the complainant and in order discharge the said loans, on the date of borrowal of amount, he issued cheques dated 09.11.2016 and 22.12.2016 bearing Nos.000114 and 000115 in favour of the complainant, drawn on Karur Vysya Bank, Adyar Branch. As requested by the accused, when the complainant presented the cheques for collection on 03.12.2016 and 22.12.2016 through his banker, it was returned dishonoured on 19.12.2016 and 10.01.2017 for the reason "Funds Insufficient". Therefore, the complainant issued registered legal notice to the accused on 13.01.2017 and 27.01.2017 calling upon the respondent to pay the cheque amount within 15 days from the date of



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receipt of notice. Inspite the service of notice on 17.01.2017 and 28.01.2017, the respondent has neither come forward to pay the cheque amount nor sent any reply to the petitioner. Therefore, complaints were filed by the petitioner as against the respondent for an offence u/s 138 of the Negotiable Instruments Act (in short 'the Act') before the trial court in S.T.C.Nos.536 and 275 of 2017. While so, after trial, the Court below had dismissed the said complaints filed by the petitioner by acquitting the respondent. Aggrieved over the same, the petitioner preferred the present petition seeking to grant leave to prefer appeal against the said judgments dated 25.09.2023 in S.T.C.Nos.536 and 275 of 2017.

3. Learned counsel appearing for the petitioner submitted that petitioner's son is doing lamination cores business and the respondent is doing stabilizer business since both the business are interrelated, the petitioner's son and the respondent known to each other. In view of the acquittance, the respondent borrowed amount from the petitioner, for which, the cheques were issued by the respondent, which stood dishonoured and the respondent has not disputed his signature in the cheques, which clearly shows that there is a legally enforceable debt, which has not been discharged by the respondent. Further, he 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, on the ground that the petitioner has not examined his son to prove his acquittance with the respondent, which deserves interference at the hands of this Court.

4. This Court perused the entire materials placed on record and the impugned judgment passed by the Court below.

5. 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 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 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.

6. 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.

7. With the above in mind, a perusal of the entire records reveals that, the petitioner claimed that on 03.10.2016, the respondent borrowed a sum of Rs.68,250/- and within a period of one week from the said borrowal, on 10.10.2016, the respondent had borrowed another sum of Rs.3,00,000/- and in order discharge the said loans, he issued Ex.P.1/cheques in favour of the petitioner. In the complaint, the petitioner had averred that the columns in the cheques were filled by his son. However, contrary to the same, in the cross-examination, the petitioner had admitted that the respondent has filled up, signed and issued the cheque. Further, in his cross-examination, the petitioner had admitted that he came to know the respondent only through his son, however, he has



not examined his son to prove his acquittance with the respondent. By considering all the above aspects and after elaborate discussion, the trial court had arrived at a conclusion that there is no legally enforceable debt and dismissed the complaints filed by the petitioner, which cannot be said to be illegal or perverse. Therefore, this court is not inclined to interfere with the same.

8. Further, 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 of 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.

9. 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.



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10. In the aforesaid circumstances, no case is made out by the petitioner for grant of leave and accordingly, these Criminal Original Petitions stand dismissed. Consequently, the Criminal Appeals are rejected at the SR stage itself.

30.07.2024

Index : Yes / No
Speaking order / Non-speaking order
NCC : Yes / No
sp

To

The Judicial Magistrate, Fast Track Court (ML), Tiruchengode.



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M.DHANDAPANI, J.

sp

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