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Crl.O.P.No.5259 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.04.2024

CORAM:

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

Crl.O.P.No.5259 of 2023
in
Crl.A.SR.No.48074 of 2022

N.Selvaraj

...Petitioner

Vs.

M.Vishnuvardan
...Respondent

Prayer in Crl.O.P.No.5259 of 2023: Criminal Original Petition filed under Section 482 Cr.P.C. to grant special leave to the petitioner to prefer appeal from the Order of dismissal of non prosecution passed in C.C.No.343 of 2018 dated 05.08.2022 by the learned Judicial Magistrate, Fast Track Court No.I @ ML, Coimbatore.

Prayer in Crl.A.SR.No.48074 of 2022: Criminal Appeal filed under Section 378 Cr.P.C. to set aside the order dated 05.08.2022 passed in C.C.No.343 of 2018 by the learned Judicial Magistrate, Fast Track Court No.I @ ML, Coimbatore.

For Petitioner : Mr.V.Sivakumar

For Respondent : No Appearance



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ORDER

WEB COPY The Criminal Original Petition has been filed to grant special leave to the petitioner to prefer an appeal against the judgment passed in C.C.No.343 of 2018 dated 05.08.2022 by the learned Judicial Magistrate, Fast Track Court No.I @ ML, Coimbatore.

2. The case of the petitioner is that, the petitioner/complainant and the respondent/accused are known to each other for a long period of time and on such acquittance, on 09.03.2015, the respondent approached the complainant and sought for a loan to the tune of Rs.2,50,0000/- for his urgent family expenses and since the petitioner had no amount in hand, he gave 108 grams of Gold ornaments worth about Rs.2,50,000/- and the respondent executed a loan agreement in favour of the petitioner on the same day and he also agreed to return the gold ornaments on or before 15.08.2015. However, despite the repeated request, the respondent had not returned the gold ornaments borrowed from the petitioner. Thereby, the petitioner sent a legal notice dated 04.11.2016, pursuant to which, on 20.12.2016, the respondent issued a cheque bearing No.000002 dated



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30.01.2017 for a sum of Rs.2,50,000/-, 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 on 28.03.2017, however, there was 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.343 of 2018. However, the trial court, had mechanically dismissed the said complaint for non-prosecution 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 05.08.2022 made in C.C.No.343 of 2018.

3. Learned counsel for the petitioner submitted that, it is true that the petitioner filed a complaint under Section 138 of the Act as against the respondent in the year 2018 and the petitioner/complainant examined himself as PW1 and Exs.P1 to P4 were marked on 12.09.2018 and in chief continuation, Exs.P5 and P6 were marked on 05.12.2018 and the matter was posted for PW1 cross on 08.02.2021. Since the petitioner was unable to



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appear before the trial court on 08.02.2021, he filed a petition under Section 256 of Cr.P.C. in CMP.No..2624 of 2022 and the same was allowed on condition that the petitioner has to appear on 27.06.2022. It is pertinent to note that, at the relevant point of time, the petitioner was aged about 73 years and due to certain health ailments, he was unable to appear before the trial court on 27.06.2022. However, the trial court, without taking into consideration the age of the petitioner and the serious health ailments suffered by the petitioner, had dismissed the subsequent petition under 256 of Cr.P.C. in CMP.No.4061 of 2022 and also dismissed the petitioner's complaint under Section 138 of NI Act for non-prosecution, which is not sustainable and it is a clear violation of principles of natural justice and, therefore, interference is warranted with the findings recorded by the court below.

4. Though notice was served and the name of the respondent was printed in the cause list, however, none appeared on his behalf. Considering the period of 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. A perusal of the materials available on record particularly the impugned order makes it clear that initially the petitioner/complainant had appeared before the trial court and examined himself as PW1 and marked Exs.P1 to P4 on 12.09.2018 and in chief continuation, marked Exs.P5 and P6 on 05.12.2018 and the matter was posted for PW1 cross on 08.02.2021, however, instead of appearing for cross examination, the petitioner filed a petition under Section 256 Cr.P.C. and the same was allowed on condition the petitioner has to appear before the trial court on 27.06.2022. However, even on the said date, the petitioner failed to appear before the trial court and the matter was posted in the PW1 cross till the date of dismissal of the complaint and the complainant had appeared before the trial court only on two occasions and the matter was pending for want of appearance of the petitioner. While so, instead of appearing before the trial court, once again the petitioner filed a petition under Section 256. Though it is claimed by the learned counsel for the petitioner that due to age related ailments, the



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petitioner was unable to appear before the trial court at the relevant point of time, at present the petitioner would have aged even more. Even though the petitioner tried to justify his absence on the ground of Covid-19 pandemic, however, the Covid-19 pandemic started only during March 2020, while so, the petitioner was absent from 05.12.2018 and no proper reason was stated for his absence prior to Covid-19 pandemic and after the end of covid-19 pandemic and the petitioner cannot completely rely upon the covid-19 pandemic to overshadow his act of not appearing before the trial court, since even during the covid-19 pandemic, limited movement was not restricted and the courts have functioned and the parties were allowed to appear and contest their cases through Video conferencing mode. Therefore, after careful consideration of the above said facts, the trial court had rightly dismissed the petitioner's complaint on the ground that further adjournment would not serve a fruitful purpose and the said act of the petitioner is nothing but only to drag on the case without any valid reason and therefore, the said finding of the trial court cannot be interfered with.

7. 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



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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.

8. 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.

9. In the aforestated circumstances, this Criminal Original Petition is dismissed and thereby, 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

The Judicial Magistrate, Fast Track Court No.I @ ML,
Coimbatore.

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M.DHANDAPANI, J.

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