



Crl.O.P.No.10843 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2024

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

Crl.O.P.No.10843 of 2024
in
Crl.A.SR.No.10263 of 2024

N.Arun Kumar

... Petitioner

Vs.

K.Shanmugavel

... Respondent

Prayer in Crl.O.P.No.10843 of 2024 : Criminal Original Petition filed u/s.378(4) of the Code of Criminal Procedure, seeking to grant special leave to prefer an appeal against the judgment of acquittal made in S.T.C.No.455 of 2021 dated 28.11.2023 on the file of Judicial Magistrate No.1 Court, (FAC), Namakkal.

Prayer in Crl.A.SR.No.10263 of 2024 : Criminal Appeal filed under Section 378 of the Code of Criminal Procedure Code, to set aside the judgment passed in S.T.C.No.455 of 2021 dated 28.11.2023 on the file of the Judicial Magistrate No.I Court (FAC), Namakkal.

For Petitioner : Mr.G.Punniakoti



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ORDER

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This Criminal Original Petition has been filed seeking to grant leave to the petitioner to file an appeal against the impugned judgment of acquittal passed by the learned Judicial Magistrate No.I Court (FAC), Namakkal, in S.T.C.No.455 of 2021 dated 28.11.2023.

2. It is averred that the petitioner/complainant and the respondent/accused are friends and out of such acquaintance, the accused demanded a sum of Rs.5,00,000/- on 28.03.2016 and the said amount has been transferred from the petitioner's bank account to the respondent's bank account on the same day. In order to discharge the said amount, the respondent had issued a cheque bearing No.056313 dated 16.12.2020 for a sum of Rs.5,00,000/- drawn on Axis Bank, Bodhupatti Branch. When the petitioner presented the said cheque for collection on 17.12.2020, the said cheque was dishonoured through return memo stating as “Account Closed” on 18.12.2020. Thereafter, the petitioner had issued a legal notice on 12.01.2021 to the respondent calling upon the respondent to pay the cheque amount within 15 days from the date of receipt of notice and the same was returned with an endorsement “Left” on 13.01.2021.

Therefore, a complaint was filed by the petitioner as against the



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respondent for an offence u/s 138 of the Negotiable Instruments Act (in short 'the N.I. Act') before the trial court in S.T.C.No.455 of 2021. While so, after trial, the Court below had dismissed the said complaint filed by the petitioner by acquitting the respondent. Aggrieved over the same, the petitioner preferred the present petition seeking to grant leave to prefer an appeal against the said judgment dated 28.11.2023 in S.T.C.No.455 of 2021.

3. Learned counsel appearing for the petitioner submitted that in order to constitute an offence u/s 138 of the Act, there shall be a legally enforceable debt or other liability substituting on the date of drawal of the cheque. In the present case, the respondent had admitted his liability and issued the disputed cheque in order to repay the loan amount, which amounts to that acknowledgement of the said liability, the cheque has been issued and the same stands proved before the trial court and the respondent also admitted his signature in the cheque. He further 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



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appreciating the above, the court below has acquitted 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



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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, in the complaint, the petitioner averred that the respondent came to his finance office and obtained Rs.5,00,000/- on 28.03.2013 for his personal needs and business purpose. It is an equally undisputed fact that the amount was transferred from the petitioner's bank account to the respondent's bank account maintained in their respective banks and subsequently, the same was dishonoured. However, the trial court arrived at a conclusion that the loan amount was transferred to the respondent's bank account in the year 2016, whereas the cheque was issued only in the year 2020 and in between, no valid acknowledgement of the liability in writing within the period of limitation and rendered findings as against the petitioner by relying Section 25(3) of the Contract Act, 1972. Further, one aspect that stares on the face of the petitioner is that, subsequent to the alleged advancement of loan of Rs.5,00,000/- in the 2016, the petitioner had given another loan for a sum of Rs.1,75,000/- to the respondent on 01.09.2018, for which, the respondent had executed the



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registered sale deed vide Ex.D1 in favour of the petitioner and one Senthil on 24.10.2019, which was admitted by the petitioner in his evidence. Subsequent to advancement of loan on 01.09.2018, a property was conveyed in favour of the petitioner for the above said amount, however, petitioner has not properly explained that execution of sale deed is for the second loan transaction and not for first loan transaction in between himself and 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 complaint 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.



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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.

10. 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.

21.06.2024

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

To

The Judicial Magistrate No.I Court, Namakkal.



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M.DHANDAPANI, J.

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