



Crl.O.P.No.16619 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2024

CORAM:

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

Crl.O.P.No.16619 of 2024

in

Crl.A.SR.No.9609 of 2023

Veerandra Patel

...Petitioner

Vs.

Madesh

...Respondent

Prayer in Crl.O.P.No.16619 of 2024: Criminal Original Petition filed under Section 378(4) Cr.P.C. to grant special leave and permit the petitioner to prosecute the above appeal filed against the order of acquittal dated 04.03.2022 made in CC.No.33 of 2016 on the file of the District Munsif cum Judicial Magistrate, Denkanikottai.

Prayer in Crl.A.SR.No.9609 of 2023: Criminal Appeal filed under Section 378 Cr.P.C. against the order of acquittal dated 04.03.2022 made in CC.No.33 of 2016 on the file of the District Munsif cum Judicial Magistrate, Denkanikottai.

For Petitioner : Mr.M.Mohamed Riyaz



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ORDER

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2. The case of the petitioner is that, the petitioner/complainant and the respondent/accused are known to each other for the past several years and on such acquittance, during 1st week of August 2015, the respondent borrowed a sum of Rs.12,00,000/- from the petitioner for his Poultry farm business purpose and the respondent promised to repay the same within a period of one month and he also issued a cheque bearing No.099787 dated 07.09.2015 towards security. On 18.09.2015, when the petitioner presented the said cheque for collection, the same was returned with an endorsement 'Funds insufficient'. Thereby, the petitioner issued a legal notice on 25.09.2015 and despite receiving the same on 26.09.2015, the respondent, neither sent a reply nor repaid the amount borrowed from the petitioner. Therefore, left with no other alternative, the petitioner filed a complaint for the offence u/s



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138 and 142 of the Negotiable Instruments Act before the trial court in CC.No.33 of 2016.

2.1 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, he examined himself as P.W.1 and Exs.P-1 to P-6 were marked. On the side of the respondent no witness was examined and only one document Ex.D-1 was marked. 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 to prefer an appeal against the said order.

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. Learned counsel further submitted that the presumption u/s 139 falls heavily on the respondent and the respondent having not rebutted the presumption, necessarily it has to be held against the respondent. Further, in order to disprove the case of the petitioner, no witnesses were examined on the respondent side and the respondent/accused has not taken any steps to examine himself as a witness to prove his innocence. However, without properly appreciating the above, the court below has acquitted the respondent, which deserves interference at the hands of this Court.

4. This Court gave its anxious consideration to the submission advanced by the learned counsel for the petitioner and perused the materials available on record.

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 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.

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. 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.

8. The respondent had not denied his signature in the cheque and also



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had not denied that the cheque does not belong to him. However, the whole case of the respondent is that whether the cheque is issued for the purpose of discharging the liability in respect of a legally enforceable debt. A perusal of the cross-examination of the petitioner reveal that, the petitioner himself admitted that there took place several transactions in between the petitioner and the respondent in the past and that, the Ex.D-1, the cheque bearing No.982909 marked by the respondent belongs to him. When it is the specific claim of the respondent/accused that, he issued the disputed cheque as security while availing hand loan from the petitioner in the past, however, after repaying the entire loan amount, when the respondent asked the petitioner to return the said cheque provided as a security, the petitioner stated that the same was lost and he gave the Ex.D.1 to the respondent and promised to collect the same after returning the disputed cheque, which was later misused by the petitioner by filing the present complaint, in order to disprove the said contention of the respondent, no documentary evidence has been produced by the petitioner and the petitioner has not stated as to how the petitioner's cheque, the said Ex.D.1 ended in the hands of the respondent. Further, the petitioner has also not proved his financial capacity to advance



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an amount of Rs.12,00,000/- to the respondent/accused.

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9. 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 as he 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.

10. 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.



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11. 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.

12. 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.

15.07.2024

skt

Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No

To

The District Munsif cum Judicial Magistrate,
Denkanikottai.

M.DHANDAPANI, J.

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