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Crl.O.P.No.5830 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2024

CORAM:

THE HON'BLE **MR.JUSTICE M.DHANDAPANI**

Crl.O.P.No.5830 of 2023
in
Crl.A.SR.No.11841 of 2023

R.Suresh Kumar

...Petitioner

Vs.

S.Srinivasan

...Respondent

Prayer in Crl.O.P.No.5830 of 2023: Petition filed under Section 378(4) of Code of Criminal Procedure to grant special leave to the petitioner to prefer appeal from the Order of dismissal passed in S.T.C.No.57 of 2021 dated 11.01.2023 by the learned Judicial Magistrate Court, Mettupalayam.

Prayer in Crl.A.SR.No.11841 of 2023: Petition filed under Section 378 of Code of Criminal Procedure to set aside the judgment of acquittal passed in S.T.C.No.57 of 2021 dated 11.01.2023 by the learned Judicial Magistrate Court, Mettupalayam.

For Petitioner : Mr.V.Sivakumar

For Respondent : Notice not ready

ORDER

This Criminal Original petition has been filed seeking to set aside the judgment of acquittal passed in S.T.C.No.57 of 2021 dated 11.01.2023 by the learned Judicial Magistrate Court, Mettupalayam.



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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 a long period of time and on such acquaintance, the respondent borrowed a sum of Rs.2,50,000/- from the petitioner during the month of May 2019 and agreed to repay the same as expeditiously as possible and the respondent had also issued a cheque bearing No.027981 dated 05.07.2019 for a sum of Rs.2,50,000/-, in discharge of the said liability. When the said cheque was presented for collection, the same was returned with endorsement 'Account closed', vide memo dated 17.07.2019. When the same was intimated to the respondent, he asked the petitioner to represent the said cheque after 65 days, believing which, the petitioner once again presented the above said cheque for collection, however, the same was once again returned with an endorsement 'account closed', vide memo dated 03.10.2019. Thereby, the petitioner sent a demand notice dated 01.11.2019 and the respondent while acknowledging the receipt of the same, had not taken any steps to repay the borrowed amount. Therefore, left with no other alternative, the complaint was filed by the petitioner as against the respondent for an offence u/s 138 of the Act before the trial court in STC.No.57 of 2021. However, the trial court, had mechanically dismissed the said complaint and acquitted the respondent. Aggrieved by the same, the petitioner has filed the present petition seeking



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grant of special leave to prefer appeal against the judgment dated 11.01.2023 made in STC.No.57 of 2021.

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. It is the further submission of the learned counsel that, in order to disprove the case of the petitioner no witnesses were examined and no documents were marked on the respondent side. He further submitted that, immediately after return of the disputed cheque with an endorsement 'Account closed', the petitioner contacted the respondent through phone and informed him about the same and only as per the instruction of the respondent, the petitioner re-presented the cheque for collection, which was also returned with the very same endorsement 'Account closed', and the said act of the petitioner cannot be said to be illegal and the same was done by the petitioner in order to provide another opportunity to the respondent to discharge his liability. However, all those facts have not been properly considered by the court below while passing the impugned order acquitting the respondent and, therefore, interference is warranted with the findings recorded by the court below.



4. Though notice was ordered by this Court on 14.03.2023, the petitioner has not taken any effective steps to serve notice on the respondent. Considering the 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. 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.

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 trial court.

8. 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 on the ground of limitation.

9. It is not in dispute that the dishonoured cheque belongs to the accused as he has not disputed his signature in the cheque. The alleged date of borrowing is in the year 2019 and in order to discharge the loan, the cheque dated 05.07.2019 was issued by the respondent in favour of the petitioner. A perusal of the impugned order makes it clear that, initially the petitioner presented the disputed cheque for collection on 15.07.2019 and the same was returned with an endorsement 'account closed' on 17.07.2019. However, instead of issuing a legal notice within the time stipulated in the Act, the petitioner once again presented the said cheque on 27.09.2019, which was also returned with the very same endorsement 'account closed'. Thereafter, the petitioner sent a legal notice to the respondent on 01.11.2019. Though it is alleged by the petitioner that only as per the instruction of the



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respondent, the disputed cheque was represented for discharge of the above liability, in order to prove the same, no document was produced by the petitioner, either before the trial court or before this Court.

10. Further, what stares writ large on the face of the petitioner is the fact that once the cheque was returned with an endorsement "Account Closed", the stand taken by the petitioner that the respondent had once again requested him to present the cheque is wholly unacceptable and it could be held only as an attempt to safeguard the limitation. When the account is already closed, as has been intimated to the petitioner, there is no question of re-opening the account to facilitate payment in the same account and the claim of the petitioner that the respondent had asked him to present the cheque once again is only for the purpose of saving the limitation period for issuing the legal notice.

11. 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.

12. Further, once the disputed cheque was returned with an endorsement 'account closed', the petitioner ought to have sent a legal notice



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within a period of 15 days from the date of receipt of information by him from the bank regarding the return of cheque as unpaid. In the case on hand, the petitioner once again presented the cheque on 27.09.2019 alleging that, it was the respondent/accused who asked the petitioner to represent the same on promise that the same would be honoured this time, which is not acceptable. Thus, the trial court, on appreciating the materials available on record, had rightly dismissed the petitioner's complaint on the ground of limitation by holding that only to bring the case within the period of limitation, the petitioner represented the cheque and therefore, the said finding of the trial court cannot be interfered with.

13. 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 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.

14. No infirmities or other materials are placed which necessitates relook into the findings recorded by the court below and granting leave to



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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.

15. 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.

23.04.2024

skt

NCC : Yes/No
Internet : Yes/No
Speaking order : Yes/No

To

The Judicial Magistrate Court,
Mettupalayam.



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M.DHANDAPANI, J.

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