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Crl.O.P.No.7649 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.04.2024

CORAM:

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

Crl.O.P.No.7649 of 2024  
in  
Crl.A.SR.No.13513 of 2024

J.Narayanan @ J.Narayanasamy

...Petitioner

Vs.

M.Somasundaram

...Respondent

**Prayer in Crl.O.P.No.7649 of 2024:** Criminal Original Petition filed under Section 378(4) of Code of Criminal Procedure to grant leave to the petitioner/appellant/complainant to file an appeal against the judgment dated 27.10.2023 in C.C.No.648 of 2017 on the file of the Fast Track Court No.V, Saidapet, Chennai.

**Prayer in Crl.A.SR.No.13513 of 2024:** Criminal Appeal filed under Section 378 of Code of Criminal Procedure to set aside the judgment in C.C.No.648 of 2017 dated 27.10.2023 on the file of the Metropolitan Magistrate Fast Track Court-V, Saidapet, Chennai and convict the respondent/accused in the offense under Sections 138 of Negotiable Instruments Act and Section 420 r/w 201 of the Indian Penal Code and impose sentence as envisaged therein.

For Petitioner : Mr.D.Ravikumar

### **ORDER**

This Criminal original petition has been filed seeking to grant special leave to the petitioner to file an appeal against the judgment passed by the Metropolitan Magistrate Fast Track Court V, Saidapet, Chennai, in C.C.No.648 of 2017 dated 27.10.2023.



Crl.O.P.No.7649 of 2024

WEB COPY

2. The case of the petitioner is that, the respondent/accused is the friend of the petitioner/complainant and he borrowed a sum of Rs.4,00,000/- from the petitioner during the month of May 2015 and promised to repay the same within a period of three months along with an interest at the rate of 18% per annum. However, the respondent failed to discharge the said liability. Thereafter, upon repeated request made by the petitioner, the respondent issued a cheque bearing No.024452 dated 31.10.2016 for a sum of Rs.4,00,000/-. When the petitioner presented the aforesaid cheque, the same was dishonoured for the reason “Funds Insufficient”. Therefore, the petitioner sent a legal notice dated 07.11.2016 to the respondent and though the same was received by the respondent on 09.11.2016, he neither sent a reply nor repaid the loan amount. Therefore, left with no other alternative, the petitioner filed a complaint under Section 138 of Negotiable Instruments Act in CC.No.648 of 2017. After adjudication, the trial court, vide impugned order dismissed the said complaint and acquitted the respondent. Aggrieved by the same, the petitioner filed the present petition seeking grant of special leave to prefer an appeal against the judgment dated 27.10.2023 made in C.C.No.648 of 2017.

3. Learned counsel for the petitioner submitted that, the cheque was issued by the respondent, which stood dishonoured and the respondent has



Crl.O.P.No.7649 of 2024

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 documents were marked on the respondent side. 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. This Court heard 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 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



Crl.O.P.No.7649 of 2024

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. It is not in dispute that the dishonoured cheque belongs to the accused as he has not disputed his signature in the cheque. A perusal of the complaint particularly the deposition of the parties reveals that, though the petitioner had mentioned in his complaint that the respondent is his friend, however, in his deposition in cross examination, he has stated that the respondent is not his friend and he came to know the respondent only through



his friend one Dhanakodi. It is further evident from the deposition in cross that the petitioner had not given the amount to the respondent, but it is alleged that it was given through his friend Dhanakodi, in which a part amount was given by way of cash to the said Dhanakodi and for a part of the amount i.e., Rs.1,94,000/- a cheque was issued. It is further evident from the materials that the said cheque was encashed by the said Dhanakodi. The above evidence of the petitioner clearly shows that the entire transaction was between the petitioner and the said Dhanakodi and not with the respondent/accused.

9. When it is the clear deposition of the petitioner that the amount was given only to Dhanakodi, the mere dishonour of the cheque, which is alleged to have been given by the respondent cannot form the basis for initiating a prosecution u/s 138 of the Negotiable Instruments Act, as dishonour of a cheque u/s 138 would be only against a legally enforceable debt and not otherwise. In the present case, there being no transaction between the petitioner and the respondent, the claim of the petitioner that the dishonour of the cheque would entail a prosecution u/s 138 against the respondent is wholly flawed, as the petitioner has not established a legally enforceable debt, which would cloth him with the power to initiation prosecution u/s 138 of the Act.



Crl.O.P.No.7649 of 2024

10. Further, it is pertinent to note that, though the petitioner claims that the disputed cheque was issued in his favour on 31.10.2016, however, a perusal of the Ex.D1 Cheque record slip makes it clear that the disputed cheque was issued in favour of the Dhanakodi as early as on 01.06.2014. Whilesso, when the cheque was not issued in favour of the petitioner, the petitioner cannot prosecute the respondent towards the dishonour of the said cheque as neither the cheque was issued to him nor is there a legally enforceable debt due and payable by the respondent to the petitioner.

11. The trial court, on appreciating the materials available on record, had rightly dismissed the petitioner's complaint holding that the petitioner has failed to establish that there was a legally enforceable debt for which the dishonoured cheques were issued by the accused to him.

12. 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.



Crl.O.P.No.7649 of 2024

13. 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.

14. 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.

**02.04.2024**

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

To

The Metropolitan Magistrate Fast Track Court-V,  
Saidapet, Chennai.



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Crl.O.P.No.7649 of 2024

**M.DHANDAPANI, J.**

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