



Crl.O.P.No.6479 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.06.2024

CORAM:

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

Crl.O.P.No.6479 of 2024
in
Crl.A.SR.No.14275 of 2024

K.P.Murugesan

...Petitioner

Vs.

V.Murugan

...Respondent

Prayer in Crl.O.P.No.6479 of 2024: Criminal Original Petition filed under Section 378(4) Cr.P.C. to grant leave to the petitioner to file the above appeal against the judgment dated 06.02.2024 made in STC.No.63 of 2020 by the District Munsif cum Judicial Magistrate, Madathukulam.

Prayer in Crl.A.SR.No.14275 of 2024: Criminal Appeal filed under Section 378 Cr.P.C. to set aside the judgment passed in STC.No.63 of 2020 on the file of the District Munsif cum Judicial Magistrate, Madathukulam dated 06.02.2024.

For Petitioner : Mr.S.Prabhu



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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 and on such acquittance, on 01.01.2014, the respondent borrowed a sum of Rs.75,000/- from the petitioner for his urgent family needs and he promised to repay the same within a period of three months with an interest at the rate of Rs.1/- for Rs.100/- per month and had also executed a promissory note in favour of the petitioner. As the respondent could not repay the borrowed amount, he paid the interest to the petitioner and issued a post dated cheque bearing No.134998 dated 26.03.2014 towards discharge of the above said liability. When the petitioner presented the above said post dated cheque for collection, the same was returned with an endorsement 'Funds Insufficient'. When the same was intimated to the respondent, the respondent/accused



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requested the petitioner to represent the said cheque for collection on 29.04.2014 and believing which, the petitioner represented the cheque on 29.04.2014, however, once again the same was returned with an endorsement “Funds insufficient”. Thereby, the petitioner sent a legal notice to the respondent on 12.05.2014, however, the same was returned on 13.05.2014. Hence, the petitioner approached the respondent and stated the said facts, which evoked 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 STC.No.63 of 2020.

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, the respondent examined himself as D.W.1 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



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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. Thereby, 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, all those facts have not been properly considered by the court below while passing the impugned order acquitting the respondent, which is wholly unsustainable and therefore, interference is warranted with the findings recorded by the court below.

4. This Court gave its anxious consideration to the submission



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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 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 persons accused of a crime, who have since been acquitted, as otherwise, they would be put through the rigours of continuous litigation even after



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their innocence has been accepted by the trial court.

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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 came to be 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. The alleged date of borrowing is in the year 2014 and in order to acknowledge the loan, the promissory note was executed. A perusal of the documents placed on record particularly the cross examination of the petitioner reveals that, though the petitioner claims that he is the one who presented the cheque along with the Challan for collection, however, when it was questioned that who filled the same, the petitioner stated that he is not aware of the same, which creates various doubts. Further, when it is the specific claim of the respondent that, the disputed cheque was given as a security by the respondent while his father had taken chit from the petitioner's finance which was later misused



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by the petitioner by filing this complaint and the said cheque was filled using two different coloured pens and the same was not filled by the respondent, in order to disprove the said contention of the respondent, no documentary evidence has been produced by the petitioner either before the lower court or before this Court. When the petitioner is running a chit business and also maintains a finance register to monitor the loans advanced in favour of the individuals, this Court is unable to accept the claim of the petitioner that he has not registered the loan advanced to the respondent in the finance register.

9. In view of the above gross contradictions with regard to the loan obtained and the cheque issued, it is incumbent upon the petitioner to establish that the cheque was issued towards discharge of a legally enforceable debt, which the petitioner has miserably failed to establish.

10. 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



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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.

11. 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.

12. 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.



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13. 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.

20.06.2024

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

To

The District Munsif cum Judicial Magistrate,
Madathukulam.

M.DHANDAPANI, J.

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