



WEB COPY



Crl.O.P.No.6686 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2024

CORAM:

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

Crl.O.P.No.6686 of 2024
in
Crl.A.SR.No.14904 of 2024

M.Mohammed Nazar

...Petitioner

Vs.

R.Neelamegam

...Respondent

Prayer in Crl.O.P.No.6686 of 2024: Criminal Original Petition filed under Section 378(4) of Code of Criminal Procedure, pleaded to grant leave to file an criminal appeal against the order dated 14.02.2024 in C.C.No.1340 of 2018 on the file of the V Fast Track Metropolitan Magistrate Court, Saidapet.

Prayer in Crl.A.SR.No.14904 of 2024: Criminal Appeal filed under Section 378 of Code of Criminal Procedure to set aside the acquittal judgment passed in C.C.No.1340 of 2018 dated 14.02.2024 on the file of the V Fast Track Metropolitan Magistrate Court, Saidapet.

For Petitioner : Mr.K.Thenrajan

ORDER

This Criminal original petition has been filed seeking to grant special leave to the petitioner to file an appeal against the impugned judgment passed by the V Fast Track Metropolitan Magistrate Court, Saidapet, in C.C.No.1340 of 2018 dated 14.02.2024.



Crl.O.P.No.6686 of 2024

2. The case of the petitioner is that, the respondent/accused is the Managing Partner of a Firm called M/s. Meenakshi Tanners and during the course of business dealings, the respondent borrowed money for his business purpose, amounting to Rs.50,000/-, whereas the same stood outstanding. When a demand was put forth by the petitioner before the respondent in respect of the outstanding amount, the respondent issued a cheque bearing No.135644 dated 01.07.2013 for a sum of Rs.50,000/- drawn on Union Bank of India, Dindigul Begumpur Branch. On presentation of the cheque for collection, the same was dishonoured due to “Funds insufficient”. Thereby, the petitioner issued a legal notice, dated 12.09.2013, for which, a reply notice dated 26.09.2013 was also received from the respondent, denying the transaction as well as the issuance of the case cheque to the petitioner. Therefore, a complaint was lodged by the petitioner as against the respondent for an offence u/s 138 of the Negotiable Instruments Act before the Trial Court in CC.No.1340 of 2018. After adjudication, the trial Court, without appreciating the above said facts has passed the impugned order, acquitting the respondent. Challenging the same, the petitioner has filed the present petition seeking grant of special leave to prefer an appeal against the judgment dated 14.02.2024 in CC.No.1340 of 2018.



Crl.O.P.No.6686 of 2024

3. The learned counsel appearing for the petitioner submitted that the cheque was issued by the respondent/accused, 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 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. Since no adverse order is being passed against the respondent, notice to the respondent is dispensed with.

5. Heard learned counsel for the petitioner and perused the material documents palced 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 seen accused of a crime rests and where a person, who had been accused



Crl.O.P.No.6686 of 2024

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.

9. It is not in dispute that the dishonoured cheque belongs to the accused as he has not disputed his signature in the cheque. It is the claim of



Crl.O.P.No.6686 of 2024

the petitioner that, the respondent borrowed a total sum of Rs.50,000/- from the petitioner on various occasions during the month of January 2013 and promised to repay the same before June 2013 and for discharge of which, the disputed cheque has been issued, which was later dishonoured. Whereas, it is the claim of the respondent that, he did not borrow any amount from the petitioner and he borrowed money only from one M.S.Balan and issued blank cheque and promisory note for the purpose of security, which was misused by the petitioner.

10. A perusal of the materials available on record reveal that, the claim of the petitioner is towards the amount, which was given to the respondent. However, it is seen from the deposition of the respondent that, the respondent was staying in the house rented out by the M.S.Balan from 1995 to 2005 and the respondent borrowed money from the said M.S.Balan on various dates and he repaid the same. However, due to some disputes the said M.S.Balan filed various complaint as against the respondent through his brother and friends in order to harass the petitioner. Though the respondent repaid the borrowed amount, however, he retained the disputed cheque given by the petitioner, which was misused by the petitioner and the respondent does not even know the petitioner. Further, the respondent had also filed complaint against the said M.S.Balan.



Crl.O.P.No.6686 of 2024

11. Even it is presumed without admitting that, as alleged by the petitioner, the petitioner and the respondent are known to each other and the petitioner is doing job work for the respondent, how come an employee advances loan amount to the employer, the said contention of the petitioner is wholly unacceptable. All those facts casts a serious doubt about the transaction alleged between the petitioner and the respondent.

12. Further, there is no material to show the payment made to the accused so as to claim that the cheques were 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 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 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



Crl.O.P.No.6686 of 2024

WEB COPY

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 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 aforesaid 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.

01.04.2024

skt

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

To

The V Fast Track Metropolitan Magistrate Court,
Saidapet.



WEB COPY



Crl.O.P.No.6686 of 2024

M.DHANDAPANI, J.

skt

Crl.O.P.No.6686 of 2024
in
Crl.A.SR.No.14904 of 2024

01.04.2024