IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.04.2024

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.Nos.6972, 7318 & 7322 of 2024
in
Crl.A.SR.Nos.14380 to 14382 of 2024

Jai Praveen G.K. ...Petitioner in Crl.O.P.No.6972/2024

D.Srividya ...Petitioner in Crl.O.P.No.7318/2024

D.Chiranjeevulu Raju ...Petitioner in Crl.O.P.No.7322/2024

Vs.

R.Sekhar ...Respondent in all Crl.O.P's.

Common Prayer: Criminal Original Petitions filed under Section 378(4) of Code of Criminal Procedure, praying to grant leave to the petitioners for filing appeals as against the judgments of the trial Court in C.C.Nos.3727, 3725 and 3726 of 2019 respectively all dated 15.12.2023 passed by the learned Fast Track Court-I, Metropolitan Magistrate at Allikulam, Chennai.

In all Crl.O.Ps.

For Petitioner : Mr.D.Gopinath

COMMON ORDER

Since the issue involved in all the Criminal original petitions are similar in nature, they are disposed of by way of this common order.

2. The complainant in CC.No.3725 of 2019 is the daughter of the complainant in CC.No.3726 of 2019 and the complainant in CC.No.3727 of 2019 is the son in law of the complainant in CC.No.3726 of 2019. The case of the petitioners/complainants is that, the accused is a close relative of the complainant in CC.No.3726 of 2019 and he had approached the complainants and borrowed a sum of Rs.10,00,000/- from each of the complainant and agreed to repay the same within a period of six months with interest of 24% per annum and he had also executed Demand promisory notes all dated 10.04.2016 to that effect. Since the accused failed to repay the above said borrowed amount, upon repeated request of the complainants, he issued three cheques all dated 10.12.2018 for discharging the above said liability. When the said cheques were presented for realization, the same were returned with endorsement "Funds Insufficient". Thereby, the petitioners sent legal notices all dated 18.12.2018 to the accused through their Advocate, for which, though the accused sent replies making vague allegations, which were denied by the petitioners, however, he failed to repay the borrowed amount. Thereby, the petitioners made complaints under Sections 138 & 142 of the Negotiable Instruments Act. However, the trial court had mechanically dismissed the same, vide present impugned orders all dated 15.12.2023. Challenging the same, the petitioners have preferred the respective petitions

seeking to grant special leave to prefer appeals against the said orders all dated 15.12.2023.

3. Learned counsel for the petitioners submitted that, though the accused in his replies all dated 22.12.2018 had stated that his wife had given Power of Attorney for a property in favour of the wife of the complainant in CC.No.3726 of 2019, who in turn had conveyed the same in favour of the said complainant, towards the settlement of the aforesaid debts, however, the same was stronly denied by the petitioners, as the same is in respect of different transaction wherein the complainant in CC.No.3726 of 2019 had purchased the said property and that too in order to lend a helping hand to the accused and the complainant in CC.No.3726 of 2019 had paid the entire sale consideration for the purchase of the said property. While so, the accused with an ill motive is trying to connect the said transaction with the above said borrowings and the trial court, had mechanically dismissed the complaints made by the petitioners which is not sustainable. He further submitted that, when the accused did not deny the signature in the cheques, the presumption to prove that the cheques were not given to discharge any debt lies with the accused and he has to rebut the presumption, when the petitioners have clearly established that there was a legally enforceable debt. In the present case, without rebutting the presumption, on vague grounds, the petitioners'

complaints under Section 138 of the NI Act were dismissed, which is not sustainable. He further submitted that, there are arguable points available to the petitioners and thereby, he prayed for allowing these petitions seeking grant leave.

4. Grant of leave is not an empty formality and this Court has to consider whether grant of leave is necessary with regard to an order of acquittal, since the accused is enjoying double presumption.

5. In the present case, the petitioners claim that they advanced a loan amount of Rs.10,00,000/- each in favour of the respondent for his personal need and it was also agreed by the respondent to repay the said amount within a period of six month with an interest at the rate of 24% per annum and he also gave a promisory notes to that effect. However, as no payment was made by the respondent and also as the cheques all dated 10.12.2018 issued by the responent towards discharge of the above liability were returned with endorsement dishonoured, the petitioners made the respective complaints under Section 138 of the Negotiable Instruments Act.

6. On the other hand, it is claimed by the respondent/accused that admittedly he borrowed a sum of Rs.30,00,000/- from the complainant in

CC.No.3726/2019 for business purposes, for which the present disputed cheques and pro notes and other documents have been obtained in blank by the said complainant. However, the said documents have been misused by the complainants at a later point of time notwithstanding the fact that the accused had paid the amount by way of giving the property in the name of his wife to the complainants. Further, it is the stand of the accused that the complainants have misused the cheques, which were given by him with regard to the earlier transaction and barring the above transaction, the accused had not taken any amount from the complainants and no cheques were issued for the said purpose.

7. In the aforestated circumstances, this Court posed a question to the learned counsel for the petitioners as to whether any separate payment has been made to the wife of the accused towards sale consideration, which is evidenced by any document, which is in relation to the sale agreement executed in favour of the complainant in CC.No.3726 of 2019 and the learned counsel for the petitioners replied that the entire sale consideration was paid by the complainant in CC.No.3726 of 2019 by way of cheques mentioned in the sale deed. However, barring the above statements, no materials were produced in the form of statement of accounts to show that the cheques were indeed given by the complainants for the said sum, which was realised by the

wife of the accused. Therefore, there is no proof with regard to the transaction for the sum of Rs.30 Lakhs.

8. While the claimants claim that the cheques are for the purpose of the loan, which was given during the year 2018 as with regard to the loan given in the year 2016, the property of the wife of the accused was transferred in the name of the complainant, however, the accused disputes the same and submits that it is only once in the year 2016 that the accused had taken loan and not able to repay the same, he had given the property standing in the name of his wife and executed a power of attorney in the name of the complainant and the property was sold in his name. Barring the above transaction, the accused had not received any loan from the complainants and the cheques, which were collected in the year 2016, were misused by the complainants for filing the present complaints.

9. It is to be noted that the complainants in CC.Nos.3725 & 3726 of 2019, while invoked the provisions of the NI Act have also simultaneously filed suits for recovery of money in O.S.Nos.675 to 677 of 2019 by producing the promisory notes alleged to have been executed by the respondent/accused and the same are pending. The accused and his wife

have also filed suit against the complainants and the wife of the complainant in CC.No.3726 of 2019 for transferring the property to their name using the power of attorney without giving the balance sale consideration.

10. In this regard, the whole case now rests of the presumption u/s 139 and thereafter the invocation of Section 138 of the NI Act. Though cheques have been dishonoured and the cheques are alleged to have been issued by the accused and the presumption is that it is for the liability of the accused to the complainant, however, as stated above, the accused had disputed the same and also submitted that he had paid the amount by selling the property standing in the name of his wife to the complainants, which fact is not disputed by the complainants, but it is disputed that the said sale was with reference to an earlier loan taken by the accused.

11. In the aforesaid backdrop, when the accused clearly disputes that he had not taken loan and the cheques, which were taken for an earlier loan, which had been repaid by the accused, the cheques, which were taken then as security have been misused, it is for the complainants to establish that a loan was taken by the accused in the year 2018 by producing necessary proof with regard to disbursal of the said loan to the accused. It is claimed by

the claimants that the loan was given in the form of cash, running to about Rs.30 Lakhs. However, no statement of account evidencing the withdrawal of Rs.30 Lakhs or credit of Rs.30 Lakhs in the account of the accused has been established.

12. Mere claim of the claimants without any proof to establish the same cannot be the basis to grant leave to appeals, more so, the presumption of innocence of the accused gets strengthened by the judgment of the trial court. Further, usually the money lenders collect blank promisory notes, cheques, sale agreements and various other documents stamp papers at the time of lending money and it could only be presumed that the same had happened herein and in the absence of any document to show that an amount was paid to the accused in the year 2018 or thereafter, the dishonour of the cheques cannot be presumed to be with regard to the liability of the accused to repay the complainant with reference to a legally enforceable debt.

13. In the light of the facts as narrated above, the court below in proper perspective has given a finding that there is no element of legally enforceable debt, which requires to be discharged by the accused and the cheques were not given for the purpose of discharging a legally enforceable

debt, and thereby, the court below had dismissed the complaints filed by the petitioners, which is based on sound and cogent reasoning and the same does not require any interference at the hands of this Court.

14. For the reasons aforesaid, these Criminal original petitions stand dismissed and accordingly, the Criminal appeals are rejected at the SR stage itself.

02.04.2024

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

To

The Metropolitan Magistrate,
Fast Track Court No.I, Allikulam, Chennai.

M.DHANDAPANI, J.

skt

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