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CRL.O.P.No.11039 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.06.2024

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

CRL.O.P.No.11039 of 2024

in

Crl.A.Sr.No.16120 of 2024

R.Venkataraman (Died)

1. J.Murugan

.. Petitioner

Vs.

A.Ramesh

... Respondent

Prayer in Crl.OP.No.11039 of 2024: This Criminal Original Petition has been filed under Section 378(4) of Cr.P.C. to grant special leave to file the appeal against the order of acquittal dated 26.12.2023 made in C.C.No.126 of 2012 on the file of the Judicial Magistrate Fast Track (Magisterial level Tiruvannamalai)

Prayer in Crl.A.SR.No.16120 of 2024: This Criminal Appeal has been filed under Section 378 of Cr.P.C. to set aside the order dated 26.12.2023 made in C.C.No.126 of 2012 on the file of the Judicial Magistrate Fast Track (Magisterial Level) at Tiruvannamalai.

For Petitioner : Mr.M.Sathish Kumar



CRL.O.P.No.11039 of 2024

ORDER

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Assailing the order of acquittal dated 26.12.2023 passed by the the file of the Judicial Magistrate Fast Track Court (Magisterial Level), Tiruvannamalai in C.C.No.126 of 2012, the present petition has been filed by the petitioner seeking leave to file appeal.

2. It is the case of the petitioner that the petitioner is the Manager of Sayar Auto Finance. In order to discharge the hand loan obtained from the petitioner, the respondent issued a cheque bearing No.301134 dated 27.10.2001 for a sum of Rs.80,000/-. However, the said cheque, upon deposit was returned by the petitioner's bankers on 30.10.2001 on the ground of "insufficient funds" and at the request of the respondent, the cheque was represented on 26.12.2001 and the same was also dishonored on 26.12.2001. Therefore, the petitioner caused a legal notice to the respondent on 31.12.2001, which was received by the respondent on 07.01.2002, but no reply was sent by the respondent. Therefore, the petitioner was constrained to file the complaint.



CRL.O.P.No.11039 of 2024

WEB COPY

3. 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, P.Ws.1 to 3 were examined and Exs.P-1 to P-7 were marked. Further, during cross examination, Ex.P-5 was marked. The respondent examined D.W.1 and marked Ex.D-1. 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 by which the present petition has been filed seeking leave to appeal.

4. Learned counsel appearing for the petitioner submitted that 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, without properly appreciating the above, the court below has acquitted the respondent, which deserves interference at the hands of this Court.



CRL.O.P.No.11039 of 2024

WEB COPY

5. This Court gave its anxious consideration to the submission advanced by the learned counsel for the petitioner and perused the materials available on record.

6. It is the consistent ratio of the Courts 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 prosecute 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 perspective.

7. Grant leave provided for u/s 378 (4) is not an empty formality,



CRL.O.P.No.11039 of 2024

WEB COPY

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 courts below.

8. With the above in mind, a perusal of the materials on record reveal that the respondent had denied that the cheque was given towards the discharge of a legally enforceable debt. In fact, it is the case of the respondent that the cheque issued by the respondent was only for car loan which was being misused by the petitioner and resulted in filing false case against the respondent.

9. The court below has premised its finding not merely on technicalities, as has been put forth by the petitioner, but it is more on sound logic. The trial court has based its findings on the deposition of P.W.1, wherein the accused denied his signature on the cheque issued by him i.e., Ex.P2. The respondent has claimed that the said cheque was given towards the car loan which existed between the petitioner and the



CRL.O.P.No.11039 of 2024

WEB COPY

respondent which was misused by the petitioner. Further, the court below has held that the petitioner has not proved the manner in which the alleged amount was given to the respondent and also the persons, in whose presence it was given and also failed to prove the existence of legally enforceable debt. There is no iota of evidence to show as to the loan amount being advanced to the respondent.

10. It is seen that there is no material evidencing the payment of Rs.80,000/- as loan to the respondent. It is the specific case of the respondent that the said cheque was only given for a car loan and the same was misused by the petitioner. In the absence of any material to establish that there is a legally enforceable debt, towards the discharge of which the cheque was issued, which had been returned unpaid, the court below was fully justified in rejecting the complaint filed by the petitioner.

11. As stated above, to grant leave, a case should be made out which bristles with infirmities which strikes at the root of the findings recorded. However, in the case on hand, the petitioner has not made out



CRL.O.P.No.11039 of 2024

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 courts below.

12. No infirmities or other materials are placed which necessitates relook into the findings recorded by the courts 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 judgment passed by the court below.

13. In the aforesaid circumstances, no case is made out by the petitioner for grant of leave and, accordingly, this criminal original petition is dismissed. Consequently, the criminal appeal is rejected at the SR stage itself.

11.06.2024

Index: Yes/No
Internet: Yes/No
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CRL.O.P.No.11039 of 2024

M.DHANDAPANI , J.

rap

To

Judicial Magistrate Fast Track (Magisterial level Tiruvannamalai)

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in
Crl.A.Sr.No.16120 of 2024

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