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CrI.O.P.No.7969 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2024

CORAM:

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

CrI.O.P.No.7969 of 2023
in CrI.A.SR.No.16886 of 2023

Madhappan

... Petitioner

Vs.

Muniyappan

... Respondent

Prayer: Criminal Original Petition filed under Section 378 (4) of Cr.P.C., to grant special leave to prosecute the appeal before this Court against the order, dated 23.03.2023 made in C.C.No.52/2018 on the file of the Judicial Magistrate Court, Palacode, Dharmapuri District.

For Petitioner : Mr.D.Boopal

For Respondents : NRN

ORDER

Assailing the order of acquittal dated 23.03.2023 passed in CC.No.52/2018 by the Judicial Magistrate Court, Palacode, Dharmapuri, 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 and the respondent are distance relatives and the petitioner is running a Textile Shop. The respondent has borrowed a sum of Rs. 2,70,000/- on 15.10.2017 as loan for business



purpose and promised that he would return the same within a period of two months. When the petitioner sought for repayment of the said loan, the respondent gave him a cheque for the loan amount of bearing No.371862 drawn on Syndicate Bank, Dharmapuri Branch. However, the said cheque has been deposited by the petitioner and the same was returned by the bankers on 20.02.2018 on the ground of insufficient funds. Therefore, the petitioner caused a legal notice to the respondent on 26.02.2018, which was received by the respondent, but no reply and no repayment was made by the respondent. Therefore, the petitioner was constrained to file the complaint.

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.W.s 1 to 3 were examined and Exs.P-1 to P-5 were marked. Neither any oral evidence nor any documents were marked by the respondent. 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 admittedly, the petitioner and the respondent are close relatives. In view the same, the respondent borrowed a sum of Rs.2,70,000/- from the petitioner. For discharging legally enforceable debt, the respondent issued a cheque. The respondent has not disputed his signature found in the cheque. 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.

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. Though notice has been served on the respondent, there is no representation on his behalf.

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, 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 petitioner and the respondent are relatives. According to the petitioner, the respondent has borrowed a sum of Rs.2,70,000/- from him in May 2017, for which, he issued a cheque in December 2017. Before the trial Court, in the complaint, the petitioner has not disclosed that on whose presence and in which



place, the petitioner has lent money to the respondent. However, in the cross examination, he has admitted that the the respondent has issued a cheque at Palacode Bus Stand. In the complaint, the petitioner has not mentioned about the place where he received the said cheque from the respondent. Apart from that, this Court perused the Ex.P1/cheque, on perusal of the same, it is seen that in the cheque, in numerical letters, it is mentioned as Rs.2,70,000/-. Contrary to that, in letter, it is mentioned as Rs.2,07,000/- only. Further, there is a lot of variation found in the cheque viz., hand writing and signature.

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 doubted the version projected by the petitioner. Further, the petitioner has not established that the cheque was given by the respondent for discharging legally enforceable debt.

10. It is seen that there is no material evidencing the payment of Rs.2,70,000/- as loan to the respondent. Therefore, in the absence of any material to establish the financial capacity of the petitioner and also establish that there is a legally enforceable debt, towards the discharge of which the



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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 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 respondents are concerned, who have 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.



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Index:Yes/No
Speaking/Non speaking order
rli

To

The Judicial Magistrate, Palacode, Dharmapuri.



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