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CrI.O.P.No.8494 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.04.2024

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CrI.O.P.No.8494 of 2023

in

CrI.A.SR.No.6967 of 2023

Balasubramaniam

.. Petitioner/Appellant

Vs.

R.Kannappan

..Respondent/Respondent

Prayer in CrI.O.P.No.8494 of 2023: Criminal Original Petition filed under Section 378(4) of the Code of Criminal Procedure Code, to grant leave to the petitioner to file an appeal against the order of acquittal dated 15.12.2022 in STC No.435 of 2020 on the file of the Judicial Magistrate, Paramthi Velur.

Prayer in CrI.A.SR.No.6967 of 2023: Criminal Appeal filed under Section 378 of the Code of Criminal Procedure Code, to set aside the Judgment of acquittal dated 15.12.2022 in S.T.C.No.435 of 2020 on the file of the Judicial Magistrate, Paramathi, Namakkal District, convict the accused/ respondent with maximum sentence of imprisonment and fine, besides directing the accused/respondent to pay compensation to the complainant/ appellant equal to thrice the value of the cheque.

For Petitioner : M/s.D.Shivakumaran

For respondent : Mr.Deepan Uday

ORDER



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This Criminal Original Petition has been filed seeking to grant leave to the petitioner to file the above Criminal Appeal as against the order of acquittal dated 15.12.2022 passed by the Judicial Magistrate, Paramthi Velur in STC No.435 of 2020.

2. It is the case of the petitioner/complainant that on 13.09.2020, the respondent/accused had borrowed a sum of Rs.6,00,000/- from the petitioner by way of loan agreeing to repay the same within 15 days. On 04.10.2020, in order to repay the said loan amount, the accused had issued a cheque bearing number '000119' drawn at Karur Vysya Bank, Paramathi Velur Branch for a sum of Rs.6,00,000/-. When the said cheque was presented on 05.10.2020 for collection, the same was returned for the reason "Funds Insufficient".

3. Thereafter, the petitioner/complainant issued a legal notice to the accused/respondent on 14.10.2020 and though the respondent acknowledged receipt of the same on 17.10.2020, he has neither sent a reply nor taken any steps to repay the loan amount. Therefore, left with no other



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alternative, the complaint was filed by the petitioner for an offence under Section 138 of the Negotiable Instruments Act (for short, the Act) before the Trial Court in S.T.C.No.435 of 2020. The Trial court, after appreciating the materials available on record, the Trial Court acquitted the respondent. Aggrieved by that, the petitioner has filed the above petition seeking to grant leave to file an appeal as against the order of acquittal in S.T.C.No. 435 of 2020 dated 15.12.2022 before the trial court. The Trial court, on appreciating the materials available on record, held that the petitioner has not established that there was a legally enforceable debt, for which, the cheque was issued, which was ultimately dishonoured and also failed to prove that the cheque was issued by the respondent for discharging a legally enforceable debt. Accordingly, the Trial Court acquitted the respondent. Aggrieved by that, the above petition has been filed seeking to grant leave to prefer the above appeal.

4. Learned counsel appearing for the petitioner submitted that the cheque, which was issued by the respondent, stood dishonoured and that the respondent has not disputed his signature in the cheque, which would clearly



show 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 even though the petitioner had established the existence of a legally enforceable debt by making out the ingredients for an offence under Section 138 of the Act, all those facts have not been properly considered by the Trial Court while passing the impugned order acquitting the respondent in toto and that therefore, interference is warranted with the findings recorded by the Trial Court.

5. On the above contention, this Court heard the learned counsel appearing for the respondent.

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 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.

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, which was issued by the accused towards discharge of legally enforceable debt due and payable by the accused, for which the complaint was filed under Section 138 of the Act, it was dismissed on the ground that the petitioner has failed to prove that there was a legally enforceable debt for which dishonoured cheque was issued.



9. A perusal of the deposition of D.W.1 shows that even as early as on 18.3.2020, the respondent had given a requisition to the bank to stop payment on 10 cheques on the ground that the cheques have been lost. However, the cheques, which are the subject matter of the *lis* have been sent for collection on 5.10.2020, which is more than six months after the cheques are claimed to have been lost. In such circumstances, it is for the appellant to establish as to the situation in which he came in possession of the cheques. Moreso, it should not be lost sight of that it is the specific case of the respondent that he had borrowed only a sum of Rs.1,00,000/- and not the amount as claimed by the appellant. Therefore, unless the appellant proves that he had given the amount claimed as loan to the respondent, through proper documentary evidence, the cheques, which are alleged to have been dishonoured, cannot form the basis for initiating a prosecution u/s 138 of the Act, for the simple reason that the cheques were claimed to have been lost even as early as on 18.3.2020.



10. It is to be pointed out that there is no iota of evidence placed by the appellant to show that the appellant had given loan to the tune of Rs.6,00,000/-. When there is no evidence to show that an amount of Rs.6,00,000/- was given as loan to the respondent, the cheques, which are alleged to have been issued for the purpose of discharging a legally enforceable debt, cannot be held to be issued for the purpose of discharging the liability towards the loan obtained. For the purpose of invocation of Section 138 of the Act, there should be a dishonour of cheque, which has been issued for the purpose of discharging a legally enforceable debt and so long as the appellant has not proved that there subsists a legally enforceable debt for which the cheques were issued towards discharge of the same, the claim of the respondent that the cheques were lost and stop payment was given as early as on 18.3.2020 cannot be brushed aside lightly.

11. In the absence of any cogent and convincing evidence, the court below has rightly come to the conclusion and in the appeal, no case having been made out to doubt the credibility of the findings rendered by the court below, no occasion arises for grant of leave and, accordingly, this petition



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fails and the same deserves to be dismissed.

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12. Accordingly, for the reasons aforesaid, this petition seeking to grant leave is dismissed. Consequent upon such dismissal, the appeal is rejected in the SR stage itself.

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To
The Judicial Magistrate, Paramthi Velur.



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M.DHANDAPANI, J.

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