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Crl.O.P.Nos.27606 & 27717 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2024

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

Crl.O.P.Nos.27606 & 27717 of 2023

in

Crl.A.SR.Nos.18210 & 18218 of 2023

Suresh Pillai

... Petitioner in both petitions

Vs.

Navas Meeran

... Respondent in both petitions

Prayer in Crl.O.P.Nos.27606 & 27717 of 2023 : Criminal Original Petitions filed u/s.378(4) of the Code of Criminal Procedure, seeking to grant leave to the petitioner to prefer the above Criminal Appeal as against the order of acquittal dated 07.12.2022 passed by the learned Metropolitan Magistrate, FTC – I, Egmore @ Allikulam in C.C.Nos.54 and 53 of 2017.

Prayer in Crl.A.SR.Nos.18210 & 18218 of 2023 : Criminal Appeals filed under Section 378 of the Code of Criminal Procedure Code, to set aside the order of acquittal dated 07.12.2022 passed by the learned Metropolitan Magistrate, FTC – I, Egmore @ Allikulam in C.C.Nos.54 and 53 of 2017 by allowing this Criminal Appeal.



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For Petitioner : Mr.Shiva
(in both petitions)

For Respondent : Mr.Rishi S.Ahuja
(in both petitions)

COMMON ORDER

These Criminal Original Petitions have been filed seeking to grant special leave to the petitioner to file appeals against the impugned judgment passed by the learned Metropolitan Magistrate, FTC – I, Egmore @ Allikulam, Chennai in C.C.Nos.54 and 53 of 2017 dated 07.12.2022.

2. It is the case of the petitioner/complainant that he is the Director of Eventus Integrated Management Private Limited and the respondent/accused is the Chairman of Eastern Condiments (P) Ltd. and he is responsible for the running of business and engaged in the day to day affairs of the company. On 30.08.2010, the respondent had transferred his 26% of shares to the petitioner's company (Eventus Integrated Management Private Limited) and share transfer agreement was also entered. While so, the petitioner had availed overdraft facility from Indian bank in order to develop large infrastructure by the



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respondent. The petitioner's company was unable to repay the loan amount and the Indian Bank had initiated recovery proceedings against the said company. Being a shareholder, the respondent had agreed to financially help the petitioner to repay the loan. Therefore, the respondent had issued cheques bearing cheque No.323071 dated 31.12.2014 for a sum of Rs.22,00,000/-, cheque No.323072 dated 31.01.2015 for a sum of Rs.22,00,000/-, cheque No.323073 dated 28.02.2015 for a sum of Rs.22,00,000/- and cheque No.323074 dated 07.03.2015 for a sum of Rs.25,00,000/- in favour of the petitioner drawn on Federal Bank, Ernakulam/North Branch (KL), Ernakululam – 682 018 and the same was presented on 12.03.2015. On presentation of the aforesaid cheques, the same was returned dishonoured with an endorsement 'Payment Stopped by Drawer' along with memo dated 13.03.2015. Therefore, the petitioner caused a lawyer notice dated 18.03.2015 to the respondent on 20.03.2015. In spite of the service of notice on 23.03.2015, the respondent has neither come forward to pay the same amount nor sent any reply to the petitioner. Therefore, the petitioner was constrained to file the complaints against the respondent for an offence u/s 138 of the Negotiable Instruments Act (in short 'the N.I. Act') before the trial court



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in C.C.Nos.54 and 53 of 2017. While so, after trial, the Court below had dismissed the said complaints filed by the petitioner by acquitting the respondent. Aggrieved over the same, the petitioner preferred the present petitions seeking to grant leave to prefer appeals against the said judgments dated 07.12.2022 in C.C.Nos.54 and 53 of 2017.

3. The 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.

4. This Court perused the entire materials placed on record and the impugned judgment passed by the Court below.



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5. 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.

6. 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.



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7. 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. Further, the Court below has held that there is no legally enforceable liability on the part of the respondent. The petitioner who was facing legal proceedings initiated by India Bank had sought help from the respondent to repay the loans obtained from the Bank. It would be apposite to mention that the petitioner and his wife had stood as guarantors for the due repayment of the loan. Therefore, it has to be presumed that as a benevolent act, the respondent had agreed to financially help the petitioner to repay the loan. It was under such circumstances that the respondent probably had given the cheques to the petitioner. In support of the same, he had also issued a letter dated 10.12.2013 to the petitioner which reads as follows:

“Dear Mr.Suresh,

Please recall the discussions we had between us on your request for a financial support to you to tide over the legal proceedings against you from Indian Bank, Chennai.

I agree to offer you financial support to the extent of



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Rs.1,50,00,000/- on our mutually agreed terms and conditions on repayment.

*Sincerely yours,
Sd/-
Navas Meeran”.*

8. The above letter clears proves that the respondent was only extending financial help to the petitioner to the tune of Rs.1.5 crores and the said amount was repayable to the respondent. Thereby, the Trial Court came to the conclusion that the proceedings of the petitioner is not genuine and it appears that it has been filed to wreck undisclosable vengeance against the respondent. Further, the cheques were not issued towards discharge of any legally enforceable debt but was a financial assistance extended to the petitioner. In the absence of such pleading and supporting evidence and also to establish that there is a legally enforceable debt, towards the discharge of which the cheques were issued, which had been returned unpaid, the court below was fully justified in rejecting the complaints filed by the petitioner.



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9. As stated above, in order to grant leave, a case should be made out, but the present cases bristles with infirmities which strikes at the root of the findings recorded. Further, in the cases on hand, the petitioner, has not made out of 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 court below.

10. 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.

11. In the aforesaid circumstances, no case is made out by the petitioner for grant of leave and accordingly, these Criminal Original Petitions stand dismissed. Consequently, the Criminal Appeals are rejected at the SR stage itself.



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Index : Yes / No

Speaking order / Non-speaking order

NCC : Yes / No

sp

To

The Metropolitan Magistrate, FTC – I,
Egmore @ Allikulam,
Chennai – 03.



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M.DHANDAPANI, J.

sp

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