



CrI.O.P.No.10747 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 03.06.2024

CORAM:

THE HON'BLE **MR.JUSTICE M.DHANDAPANI**

CrI.O.P.No.10747 of 2024
in CrI.A.Sr.No.21836 of 2024

C.U.Vijayavarma

...Petitioner

Vs.

Sathiyaraj

...Respondent

Criminal Original Petition filed under Section 378(4) of Criminal Procedure Code praying to grant leave to the petitioner to file appeal against the order of acquittal dated 18.03.2024 made in STC No.341 of 2021 on the file of the Judicial Magistrate -II, Chidambaram.

For Petitioner : Mr.D.Baskar

ORDER

This petition has been filed to grant leave to the petitioner to file appeal against the order of acquittal dated 18.03.2024 made in STC No.341 of 2021 on the file of the Judicial Magistrate -II, Chidambaram.



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2. It is the case of the petitioner that the petitioner and the respondent are friends and for the purpose of personal household expenses, from the year August 2016, the respondent had borrowed a sum Rs.1,50,000/- on several installments. Thereafter, the petitioner approached the respondent on 10.12.2020 and requested to repay the borrowed amount, but the respondent did not repay the same. In spite of the repeated demands, the respondent had given a post dated cheque bearing No.119253 dated 15.12.2020 drawn on Dhanalaxmi Bank, Chidambaram Branch towards discharge of credit liability. The petitioner presented the cheque on 31.12.2020 and the same was returned with an endorsement 'Account Dormant' along with return memo dated 01.01.2021. Therefore, the petitioner caused a legal notice to the respondent on 11.01.2021, which was received by the respondent, but no reply was sent 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



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guilty, the court below proceeded with the trial of the case. At the time of trial, on the side of the petitioner, P.W.1 was 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 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.

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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.



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8. 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 the money transaction between the petitioner and the respondent was ended before August 2016 and even though the petitioner has stated that he lent money to the respondent before August 2016, the respondent issued the cheque in question on 10.12.2020. Admittedly, the cheque in question has not been given in respect of legally enforceable debts and after the lapse of three years, for a time barred debt, the present complaint has been filed and that the complaint is not maintainable in law. Hence, the Trial Court came to a conclusion that the duty of petitioner is to plea about the execution of promisory note. Since there is no pleading in the complaint to that effect, no evidence can be adduce. Generally, evidence are being adduced to substantiate the pleading and as per law, if there is no pleading, no evidence can be adduced. 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 cheque was issued, which had been returned unpaid, the court below was fully justified in rejecting the complaint filed by the petitioner.

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9. 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.

10. 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.

11. In the aforestated 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



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M.DHANDAPANI, J.

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