



WEB COPY



Crl.O.P.No.15142 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.07.2024

CORAM:

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

Crl.O.P.No.15142 of 2024

in

Crl.A.SR.No.22824 of 2024

K.Kuppusamy

...Petitioner

Vs.

C.Vijayalakshmi

...Respondent

Prayer in Crl.O.P.No.15142 of 2024: Criminal Original Petition filed under Section 378(4) Cr.P.C. to grant leave to the petitioner to file an appeal against the judgment of Judicial Magistrate Fast Track Court-II, Egmore at Allikulam, Chennai dated 20.02.2024 in STC.No.2780 of 2021 acquitting the respondent in the case and hear and allow the appeal.

Prayer in Crl.A.SR.No.22824 of 2024: Criminal Appeal filed under Section 378 Cr.P.C. to set aside the acquittal judgment dated 20.02.2024 in STC.No.2780 of 2021 on the file of Metropolitan Magistrate Fast Track Court-II, Egmore at Allikulam, Chennai.

For Petitioner : Mr.R.Ganesamoorthy

ORDER



Crl.O.P.No.15142 of 2024

This Criminal Original Petition has been filed to grant leave to the petitioner to file the above appeal against the judgment of acquittal dated 20.02.2024 passed in STC.No.2780 of 2021 by the Metropolitan Magistrate Fast Track Court-II, Egmore at Allikulam, Chennai.

2. The case of the petitioner is that, the respondent/accused is known to the petitioner/complainant through her husband and on such acquittance, on 10.04.2020, the respondent borrowed a sum of Rs.6,00,000/- from the petitioner and she promised to repay the same with an interest at the rate of 24% per annum and she also executed a promissory to that effect. While so, as the respondent failed to repay either the interest or the principal amount, upon repeated request made by the petitioner, the respondent issued a cheque dated 20.09.2021 bearing No.724473 for a sum of Rs.8,00,000/- towards the discharge of the liability. When the petitioner presented the above said cheque for collection, the same was returned with an endorsement 'Funds insufficient'. Thereby, the petitioner sent a legal notice to the respondent on 28.09.2021, despite receiving the same on 05.10.2021, though the respondent sent a reply dated 18.10.2021, however, she has not



Crl.O.P.No.15142 of 2024

come forward to repay the borrowed amount. Therefore, left with no other alternative, the complaint was filed by the petitioner for an offence u/s 138 of the Act before the trial court in STC.No.2780 of 2021.

2.1 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.1 and Exs.P-1 to P-6 were marked. On the side of the respondent D.W.1 & D.W.2 and Exs.D-1 & D-2 were marked. 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 to prefer an appeal against the said order.

3. Learned counsel appearing for the petitioner submitted that the cheque was issued by the respondent, which stood dishonoured and the respondent has not disputed her signature in the cheque, which clearly shows that there is a legally enforceable debt, which has not been discharged by the



respondent. Learned counsel further submitted that the presumption u/s 139 falls heavily on the respondent and the respondent having not rebutted the presumption, 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 gave its anxious consideration to the submission advanced by the learned counsel for the petitioner and perused the materials available on record.

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 seen 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.

7. With the above in mind, a perusal of the materials on record reveals that the respondent had not denied her signature in the cheque and also had not denied that the cheque does not belong to her. However, the whole case of the respondent is that whether the cheque is issued for the purpose of discharging the liability in respect of a legally enforceable debt as according to the respondent, the amounts, which are alleged to have been paid by the petitioner to the respondent does not tally with the amount which is reflected on the cheque, which is claimed to be the liability of the respondent to the petitioner in respect of a legally enforceable debt.



WEB COPY

8. It is not in dispute that the dishonoured cheque belongs to the accused as she has not disputed her signature in the cheque. The alleged date of borrowing is in the year 2020 and it is alleged that, in order to acknowledge the loan, a promissory note was executed by the respondent. Though it is alleged that after receiving the loan amount, a promissory note was executed by the accused assuring repayment of loan amount, the said document was not produced by the complainant either before the trial court or before this Court in order to substantiate his claim and non-production of the said document which is very vital to the case creates various doubts in the case and contention of the petitioner. If at all the promissory note has been executed, what prompted the complainant to receive the cheque, as he could very well have proceeded against the respondent in a civil court. Further, no proper explanation has been given by the petitioner as to how a sum of Rs.2 Lakhs has been computed as interest payable by the respondent for the alleged sum of Rs.6 Lakhs borrowed during April 2020.

9. Further, there is no material to show the payment made to the accused so as to claim that the cheque was issued which stood dishonoured



and, therefore, there is a legally enforceable debt which subsists. Thus, the trial court, on appreciating the materials available on record, had rightly dismissed the petitioner's complaint as he failed to establish that there was a legally enforceable debt for which the dishonoured cheque was issued by the accused and therefore, the said finding of the trial court cannot be interfered with.

10. In order to grant leave, a case should be made out , but the present case bristles with infirmities which strikes at the root of the findings recorded. Further, 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 court below.

11. 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



Crl.O.P.No.15142 of 2024

passed by the court below.

WEB COPY

12. In the aforestated circumstances, no case is made out by the petitioner for grant of leave and accordingly, this Criminal Original Petition stands dismissed. Consequently, the Criminal Appeal is rejected at the SR stage itself.

08.07.2024

skt

Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No

To

The Metropolitan Magistrate Fast Track Court-II,
Egmore at Allikulam, Chennai.

M.DHANDAPANI, J.

8/9



WEB COPY



Crl.O.P.No.15142 of 2024

skt

Crl.O.P.No.15142 of 2024
in
Crl.A.SR.No.22824 of 2024

08.07.2024