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Crl.O.P.No.10783 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.06.2024

CORAM:

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

Crl.O.P.No.10783 of 2024
in Crl.A.Sr.No.11596 of 2023

Suresh Pillai

...Petitioner

Vs.

NavasMeeran

...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 07.12.2022 passed by the Learned Metropolitan Magistrate in C.C.No.52 of 2017.

For Petitioner : Mr.P.Shiva

For Respondent : Mr.Rishi

ORDER

This petition has been filed to grant leave to the petitioner to file appeal against the order of acquittal dated 07.12.2022 made in C.C.No.52 of 2017 on the file of the Learned Metropolitan Magistrate.

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2. It is the case of the petitioner that the petitioner is the Director of Eventus Integrated Management Private Limited. The respondent is the Chairman of Eastern Condiments (P) Ltd., and 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 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 five post dated cheques on 27.04.2014 in favour of the petitioner drawn on Federal Bank, Ernakulam/North Branch and the same was presented on 31.12.2020. On presentation of the aforesaid cheque, the same was returned with an endorsement 'Funds



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insufficient' along with memo of dishonor dated 27.02.2015. Therefore, the

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petitioner caused a legal notice to the respondent on 18.03.2015, which was received by the respondent, but no reply was sent by him. 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.1 was examined and Exs.P-1 to P-19 were marked. On the side of the accused/respondent, Ex.D1 was marked and examined himself as D.W.1. On the basis of oral and documentary evidence, the court below found that the respondent is not pleaded guilty for the offence and, accordingly, acquitted the respondent. Aggrieved by the same, 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



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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.

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



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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. 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



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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 Rs.1,50,00,000/- on our mutually agreed terms and conditions on repayment.
Sincerely yours,
sd/-
Navas Meeran”.*

9. The above letter clearly 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 undiscoverable vengeance



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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 complaint filed by the petitioner.

10. 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.

11. No infirmities or other materials are placed which necessitates relook into the findings recorded by the courts below and



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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.

12. 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 itself.

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Speaking Order : Yes/No
NCC : Yes/No

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M.DHANDAPANI, J.

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