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CRL.O.P.No.12292 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 11.06.2024**

CORAM:

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

**CRL.O.P.No.12292 of 2023**

**in**

**CrI.A.SR.No.20139 of 2023**

R.Kumar

... Petitioner

Vs.

R.Pushpa

... Respondent

**Prayer in CrI.O.P.No.12292 of 2023:** This Criminal Original Petition has been filed under Section 482 of Cr.P.C. to grant Special Leave to appeal before this Court against the dismissal and acquittal order of accused / respondent in C.C.No.4486 of 2015 on the file of the Metropolitan Magistrate Fast Track Court – V, Saidapet, Chennai – 15.

**Prayer in CrI.A.SR.No.20139 of 2023:** This Criminal appeal has been filed under Section 378(4) of Cr.P.C. to call for the records and set aside the judgment dated 20.02.2023 in C.C.No.4486 of 2015, on the file of Metropolitan Magistrate Fast Track Court – V, Saidapet, Chennai – 15 and convict the respondent / accused.

For Petitioner : Mr.A.K.Rajaraman



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**ORDER**

**WEB COPY** Assailing the order of acquittal order of accused / respondent in C.C.No.4486 of 2015 on the file of the Metropolitan Magistrate Fast Track Court – V, Saidapet, Chennai – 15.

2. It is the case of the petitioner that the petitioner is doing the business of building house units. During the course of the business, the respondent approached the petitioner and had engaged the petitioner to construct flats at S.No.460 situated in Maraimalai Nagar. The petitioner entered into an agreement with the respondent. After completion of 70% of work, the total cost towards the completion of work arrives at Rs.33,58,852/-, in which the respondent had already paid a sum of Rs.17,50,000/- and in order to repay the remaining due to the tune of Rs.16,00,000/-, the respondent had issued a cheque dated 05.06.2015 in favour of the petitioner. However, the said cheque, upon deposit was returned by the petitioner's bankers on 05.06.2015 on the ground of insufficient funds. Therefore, the petitioner caused a legal notice to the respondent on 10.06.2015, which was received by the respondent on 20.06.2015. Since the cheque amount has not been paid, the petitioner was constrained to file the complaint.



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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-10 were marked. On behalf of the respondent no witness was examined and Exs.D1 to D4 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.

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



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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.

8. With the above in mind, a perusal of the materials on record reveal



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that the respondent has not disputed the cheque nor denied his signature. But the respondent has denied knowledge of the complainant. In fact, the respondent had denied that the cheque was given towards the discharge of a legally enforceable debt. It is the case of the respondent that he has not borrowed any money from the petitioner and the said cheque was given by the husband of the respondent for obtaining hand loan of Rs.75,000/- as security, which was misused by the petitioner.

9. 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. The trial court has doubted the version projected by the petitioner. Further, the court below has held that there is no proof to show that the complainant had spent a sum of Rs.33,58,852/- for construction of the said flat. There is no document to prove that there was a loan transaction between the petitioner and the respondent.

10. It is seen that there is no material evidencing the money spent by the complainant of Rs.33,58,852/- for construction of flat. Therefore, in the absence of any material to establish that there is a legally enforceable debt, towards the discharge of which the cheque was issued, which had been returned



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unpaid, the court below was fully justified in rejecting the complaint filed by the petitioner.

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11. 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.

12. 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 respondents are concerned, who have been acquitted through a well considered judgment passed by the court below.

13. In the aforesaid 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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Index: Yes/No  
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NCC : Yes/No  
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**M.DHANDAPANI , J.**

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