



Crl.O.P.No.16590 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2024

CORAM:

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

Crl.O.P.No.16590 of 2024

in

Crl.A.SR.No.23757 of 2024

Ramdass

...Petitioner

Vs.

R.Karthick

...Respondent

Prayer in Crl.O.P.No.16590 of 2024: Criminal Original Petition filed under Section 378(4) Cr.P.C. to grant special leave to file appeal against the judgment passed by the learned Judicial Magistrate, Fast Track Court, Hosur, dated 11.03.2024 in STC.No.116 of 2017, acquitting the accused for the offence punishable under Section 138 of Negotiable Instruments Act, 1881.

Prayer in Crl.A.SR.No.23757 of 2024: Criminal Appeal filed under Section 378 Cr.P.C. to set aside the order of acquittal passed by the learned Judicial Magistrate, Fast Track Court, Hosur dated 11.03.2024 in STC.No.116 of 2017 and convict the respondent/Accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

For Petitioner : M/s.Teankodi Annam Nelson



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ORDER

WEB COPY This Criminal Original Petition has been filed to grant leave to file appeal against the judgment passed by the learned Judicial Magistrate, Fast Track Court, Hosur, dated 11.03.2024 in STC.No.116 of 2017, acquitting the accused for the offence punishable under Section 138 of Negotiable Instruments Act, 1881.

2. The case of the petitioner is that, the petitioner/complainant and the respondent/accused are known to each other for the past several years and on such acquittance, during December 2014, the respondent borrowed a sum of Rs.3,75,000/- from the petitioner for registration purpose and promised to repay the same within a period of 15 days. However, the respondent failed to repay the amount within the said time and thereafter, upon repeated request made by the petitioner, he issued five cheques bearing Nos.000016, 000017, 000018, 000019 and 000020 dated 04.03.2017, 04.03.2017, 10.03.2017, 10.03.2017 & 13.03.2017 respectively, each for a like sum of Rs.75,000/- towards discharge of the above said liability. While so, when the petitioner presented the said cheques for collection on three different dates, the same



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were returned with an endorsement 'Funds insufficient'. Thereby, the petitioner issued a legal notice on 24.03.2017 and despite receiving the same on 28.03.2017, the respondent, neither sent a reply nor repaid the amount borrowed from the petitioner. Therefore, left with no other alternative, the petitioner filed a complaint for the offence u/s 138 and 142 of the Negotiable Instruments Act before the trial court in STC.No.116 of 2017.

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 & P.W.2 and Exs.P-1 to P-11 were marked. On the side of the respondent no witness was examined and only one document Ex.D-1 was 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



cheques were issued by the respondent, which stood dishonoured and the respondent has not disputed his signature in the cheques, 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. Further, in order to disprove the case of the petitioner, no witnesses were examined on the respondent side and the respondent/accused has not taken any steps to examine himself as a witness to prove his innocence. Further, merely because one among the five cheques was filled in a different colour, will not negative the claim of the petitioner. 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. It is the case of dishonour of cheques given by the accused to the



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complainant towards discharge of legally enforceable debt due and payable by the accused for which the complaint was filed under Section 138 of Negotiable Instruments Act which was dismissed.

8. The respondent had not denied his signature in the cheques and also had not denied that the cheques does not belong to him. However, the whole case of the respondent is that whether the cheques are issued for the purpose of discharging the liability in respect of a legally enforceable debt. A perusal of the averments made in the complaint and the cross-examination of the petitioner reveal that, though the petitioner in his cross-examination stated that he purchased a property from the respondent and he paid a sum of Rs.8,50,000/- and promised to pay the balance sum of Rs.5,00,000/-, however, the same was not mentioned in his complaint. When the petitioner himself has to pay a sum of Rs.5,00,000/-to the accused/respondent, this Court cannot understand as to how the accused is liable to pay a sum of Rs.3,75,000/- to the petitioner. Further, though the petitioner claim that the respondent borrowed a sum of Rs.3,75,000/- during December 2014, however, the disputes cheques are issued only in the year 2017, which is



after a lapse of about three years and the same creates various doubts as to whether the said cheques are issued towards discharge of the above said liability and the petitioner has also not proved his financial capacity to advance an amount of Rs.3,75,000/- to the respondent/accused.

9. Further, there is no material to show the payment made to the accused so as to claim that the cheques were 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



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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 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 stands dismissed. Consequently, the Criminal Appeal is rejected at the SR stage itself.

15.07.2024

skt

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

To

The Judicial Magistrate, Fast Track Court, Hosur.

M.DHANDAPANI, J.

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