



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.06.2024

CORAM:

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

Crl.O.P.No.11288 of 2024
in Crl.A.SR.No.24384 of 2024

M.Panchamuthu

... Petitioner

Vs.

1. P.K.Chacko

2. Daisy Chacko

... Respondents

Prayer: Criminal Original Petition filed under Section 378 (4) of Cr.P.C., to grant Special Leave to file appeal against the order of acquittal dated 14.02.2024 made in CC.No.66 of 2021 passed by the learned Judicial Magistrate, Harur.

For Petitioner : Mr.C.Munusamy
For Respondent : Mr.S.Xavier Felix

ORDER

Assailing the order of acquittal dated 14.02.2024 made in CC.No.66 of 2021 passed by the learned Judicial Magistrate, Harur, the present petition has been filed by the petitioner seeking leave to file appeal.

2. It is the case of the petitioner that the petitioner herein had given a complaint about his lost cheques bearing Nos.552159 and 542795 through



online complaint to the concerned police on 27.08.2019 that he lost his cheques on 25.08.2020 and issued paper publication to return the cheques if anyone is found vide publication dated 31.08.2019 in the newspaper on 31.08.2019. On 02.01.2020, the petitioner received a lawyer notice from the respondents herein as if the petitioner received a sum of Rs.40,00,000/- and Rs.36,87,000/- from the respondents respectively by issuing the above cheques in question. Immediately, the petitioner issued reply to the respondents on 14.01.2020. Besides that the petitioner had issued stop payment instructions to his banker on 07.01.2020. Apart from that the petitioner had given a complaint to the Superintendent of Police, Dharmapuri on 22.04.2021 and the Deputy Superintendent of Police, Dharmapuri on 23.04.2021 that he has lost his cheques. The above said police personnel had not taken any steps in this regard. Hence, the petitioner filed a private complaint under Section 200 Cr.P.C. In CC.No.66 of 2021 and the same was dismissed on 09.06.2023 and acquitted the accused. Challenging the order of acquittal, the appellant has filed the present revision before this Court.

3. Learned counsel appearing for the petitioner submitted that the petitioner has innocently lost his two signed cheques at Morappur Santhai Medu on 25.08.2019 and immediately he made an online complaint before the Police



on 27.08.2019. Subsequently, he received a legal notice from the respondent and thereafter, he realised that the cheque was stolen by him. There was a previous transaction between the petitioner and the respondents as he has sold his property to the respondents and there was a dispute with regard to the exchange of money between them. In order to wreck vengeance, the respondents stolen the cheques from the petitioner on 25.08.2019 and sent notice. Inadvertently, the petitioner has mentioned in his online complaint that the cheques were missing on 26.08.2019 instead of 25.08.2019. Without properly appreciating the fact, the court below has acquitted the respondents, which deserves interference at the hands of this Court.

4. The learned counsel for the respondent submitted that the respondents are resident of Bangaluru. It is unbelievable that the respondents came to Morappur for stolen the cheques of the petitioner. The petitioner cooked up the entire story and filed a complaint before the learned Magistrate. The learned Judge, after perusing the entire documents and witnesses, rightly acquitted the respondents, which does not warrant any interference.

5. This Court gave its anxious consideration to the submission advanced by the learned counsel for the petitioner as well as the respondents 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 person 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



that initially, the petitioner made an online complaint on 27.08.2019 before the concerned Police on 25.08.2019 as if his cheques were stolen by some unknown person. It is admitted that the respondents have served notice to the petitioner on 02.01.2020 under Section 138 of NI Act, for which, the petitioner sent a reply 14.01.2020 in which he has not mentioned about the stolen cheques. Subsequently, the petitioner made another complainant before the Superintendent of Police on 22.04.2021 as against the respondent, in which, the petitioner specifically mentioned that he lost two signed blank cheques on 25.08.2020 at about 6.00 P.M. However, prior to the legal notice, he made an online complaint specifically stating that he lost the cheque on 26.08.2020, which shows that the petitioner has changed his version and he not approached the trial Court with clean hands. 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 court below was fully justified in rejecting the complaint filed by the petitioner.

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 respondents are concerned, who have 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 itself. However, the appellate Court shall decide the private complaint without influencing the observation made in the trial Court as well as this Court.

19.06.2024

rli

Index: Yes/No

Speaking/Non speaking order

To

The Fast Track Court No.I, Judicial Magistrate, Coimbatore.



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M.DHANDAPANI,J.

Rli

CrI.O.P.No.11288 of 2024
in CrI.A.SR.No.24384 of 2024

25.06.2024

CRL OP. 11288 of 2024



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13-12-2024

CORAM

THE HONOURABLE MR JUSTICE M.DHANDAPANI

CRL OP. 11288 of 2024

AND

CRL A SR. 24384 OF 2024

M.PACHAMUTHU
S/O.MUTHUSAMY, NO.3/712-A, ARASAMARATHU
KARATTUR, AMANI KONDALAMPATTI,
P.NATTAMANGALAM POST, SALEM TALUK AND
DISTRICT.

PETITIONER(S)

Vs

P.K.CHACKO
S/O.P.J.KURIAKOSE

RESPONDENT(S)

CRL A SR. 24384 of 2024

M.PACHAMUTHU

APPELLANT(S)

Vs

P.K.CHACKO

RESPONDENT(S)

CRL OP. 11288 of 2024

For Petitioner(s):
MR.C.MUNUSAMY
For Respondent(s):

M/S.S.XAVIER FELIX

CRL A SR. 24384 of 2024

For Appellant(s):
For Respondent(s):



ORDER

The matter is listed today under the caption 'for being mentioned' at the instance of the learned counsel appearing for the petitioner.

2.The learned counsel appearing for the petitioner would submit that in the order dated 25.06.2024 made in Crl.O.P.No.11288 of 2024 In Crl.A.SR.No.24384 of 2024, in the last sentence of paragraph no.11, inadvertently, it has been typed as 'the appellate Court shall decide' instead of 'the lower Court shall decide' and prayed for appropriate orders.

3.In view of the above, in the order dated 25.06.2024 made in Crl.O.P.No.11288 of 2024 In Crl.A.SR.No.24384 of 2024, in the last sentence of paragraph no.11, the relevant portion is to be read as '**the lower Court shall decide**' instead of '**the appellate Court shall decide**'.

4.Registry is directed to carry out the necessary corrections and re-issue copy of the order to the respective learned counsel appearing for the parties.

13-12-2024

CRL OP. 11288 of 2024

To

1. P.K.CHACKO
S/O.P.J.KURIAKOSE

2. DAISY CHACKO

W/O.P.K.CHACKO, BOTH ARE RESIDING AT NO.1090/B, 4TH FLOOR,
P.N.PLAZA, 18TH CROSS, 3RD SECTOR, HSR LAYOUT, BENGALURU -
560 102.



CRL A SR. 24384 of 2024

1. P.K.CHACKO
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