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Crl.O.P.No.13017 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2024

CORAM:

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

Crl.O.P.No.13017 of 2024
in Crl.A.SR.No.61274 of 2023

Rajesh

... Petitioner

Vs.

Maria Joseph Cyril Pradeep

... Respondent

Prayer: Criminal Original Petition filed under Section 378 (4) of Cr.P.C., to set aside the acquittal imposed on the judgment dated 12.10.2023 made in STC. No.612 of 2022 on the file of the learned Judicial Magistrate, FTC at Poonamallee by allowing this Criminal Appeal.

For Petitioner : Mr.M.Senthil Kumar

ORDER

This petitioner has filed this Original Petition seeking leave to file an appeal against the order of acquittal imposed on the judgment dated 12.10.2023 made in STC. No.612 of 2022 on the file of the learned Judicial Magistrate, FTC at Poonamallee.



2. The facts of the case are as follows:

It is the case of the complainant that when the petitioner was working in abroad, the respondent has borrowed a sum of Rs.1,00,00,000/- (Rupees One Crore only) and towards of the discharge of the said loan amount on 17.03.2021 he has written a promissory note in the present of witnesses. Despite of repeated request made by the petitioner, the respondent has issued a cheque for a sum of Rs.50,00,000/-. The petitioner/complainant presented the said cheque on 20.04.2022 before the Bank for encashment of the amount. However, the said cheque was returned on 21.04.2022 with an endorsement "funds insufficient". Hence, the appellant gave a statutory notice to the respondent/accused on 07.05.2022 seeking for repayment of the loan amount. The respondent has received the statutory notice on 24.03.2022 and sent his reply on 19.05.2022 with false averments. Since no amount was forthcoming, the petitioner has filed a complaint before the learned Judicial Magistrate under Section 138 of NI Act which was taken on file in STC. No.612 of 2022. After fulfilled trial, the learned Judge rejected the case of the complainant by the impugned judgment. Aggrieved by the dismissal of his case, the complainant has filed the present OP seeking leave of this Court to prefer an appeal against the judgment of the learned trial judge.



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3. The learned counsel appearing for the petitioner vehemently argued that the petitioner and the respondent are friends. The petitioner has given money by way of cash and through online. The trial Judge ought not to have disbelieved the case of the complainant. The complainant has produced all materials records and his oral evidence is cristal clear as to the borrowing of the loan by the respondent on non repayment of the same. The respondent has given a cheque for a sum of Rs.50,00,000/- dated 18.04.2022. The respondent has agreed that he would repay the entire loan amount of one crore within a very short period. However, even after one year, the respondent did not repay either the principle amount or interest thereof. Therefore, the complainant made use of the cheque given by the respondent and presented the same for collection on 20.04.2022. However, the said cheque was dishonored. Therefore, the complainant has issued Statutory notice, even after receipt of the said notice, the respondent has failed to honour his commitment. Therefore, the complainant was forced to approach the Judicial Magistrate with the present complaint. Before the trial Court, the respondent did not dispute the signature contained in the instrument. However, the learned trial Judge, without appreciating the material facts, has dismissed the case of the complainant.



Hence, the learned counsel prays that special leave may be granted to the petitioner to prefer an appeal against the order of the learned trial Judge.

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 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.

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 courts below.

7. With the above in mind, a perusal of the materials on record reveal that the petitioner and the respondent are friends. They were working in abroad for ten years. According to the petitioner, the respondent has borrowed a sum of Rs.1 Crore from him on different dates, for which, he executed a promissory note. The petitioner has admitted in his complaint, proof affidavit and in the cross examination that the respondent has executed a promissory note note on 17.03.2021. However, he has not produced the said promissory note before the trial Court even after the Court asked to produce the same and also the witnesses who signed in the promissory note have also not examined before the trial Court., which creates a strong doubt about that the petitioner has lent such huge amount. Further, the petitioner has not established that he has lent a sum of Rs.1,00,00,000/- and transaction and accounts details have also not furnished before the trial Court.



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. The trial court has doubted the version projected by the petitioner. Therefore, in the absence of any material to establish the financial capacity of the petitioner and also 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.

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



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passed by the court below.

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11. 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
Speaking/Non speaking order
rli

To

Judicial Magistrate, FTC at Poonamallee



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