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Crl.O.P.No.14225 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2024

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

Crl.O.P.No.14225 of 2024

in

Crl.A.SR.No.27708 of 2024

Guru Chandra Engineering,
By its proprietor,
Mr.Selvam,
S/o.Gurusami,
No.21/13, Shanmugha Raja Street,
Ekaduthangal, Chennai – 600 032.

... Petitioner

Vs.

Sri Lakshmi CNC,
By its Partners,
1.Mr.G.Suresh
2.B.P.Naresh Kumar

... Respondent

Prayer in Crl.O.P.No.14225 of 2024 : Criminal Original Petition filed u/s.378(4) of the Code of Criminal Procedure, seeking to grant special leave to prefer appeal from the order of acquittal made in C.C.No.4666 of 2017 dated 22.04.2024 passed by the III Fast Track Court, Metropolitan Magistrate at Saidapet, Chennai.

Prayer in Crl.A.SR.No.27708 of 2024 : Criminal Appeal filed under Section 378 of the Code of Criminal Procedure Code, to set aside the judgment made in C.C.No.4666 of 2017 dated 22.04.2024 passed by the



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III Fast Track Court, Metropolitan Magistrate at Saidapet, Chennai, that acquitted the respondent/accused from the offence under section 138 of the Negotiable Instrument Act and acquitted under section 255(1) of Cr.P.C. by allowing this Criminal Appeal, consequently punish the respondent/accused herein under section 138 and 142 of the Negotiable Instruments Act, with maximum sentence and direct the respondent/accused to pay compensation to the complainant under section 357 of Cr.P.C. as prayed for in the C.C.No.4666 of 2017.

For Petitioner : Mr.V.Ramana Reddy

ORDER

This Criminal Original Petition has been filed seeking to grant leave to the petitioner to file an appeal against the impugned judgment passed by the learned III Fast Track Court, Metropolitan Magistrate at Saidapet, Chennai in C.C.No.4666 of 2017 dated 22.04.2024.

2. It is averred that the petitioner/complainant is a firm namely Guru Chandra Engineers and it is run by its proprietor namely Selvam and the respondent/accused is a firm namely M/s.Sri Lakshmi CNC and they are represented by its partners namely G.Suresh and Naresh Kumar. On 28.04.2006, the accused purchased milling machines, air compressor,



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stabilizer, holders, holder stand from the complainant firm worth about Rs.9,50,000/- and the accused paid the initial amount of Rs.4,00,000/- for the purchased materials. For the remaining balance amount Rs.5,50,000/- the accused issued a cheque for Rs.2,00,000/- bearing No.023598 dated 17.01.2017 drawn on Punjab National Bank, Mugapair (East) Branch, Chennai – 600 037 in favour of the complainant firm signed by both the partners of the accused firm. When the complainant presented the above cheque for collection, the said cheque was returned vide return memos dated 02.02.2017 and 03.04.2017 for the reason “insufficient funds”. Thereafter, the petitioner had sent a legal notice dated 09.04.2017 to the respondent calling upon the respondent to pay the cheque amount within 15 days from the date of receipt of notice. In spite of the service of notice, the respondent has neither come forward to pay the cheque amount nor sent any reply to the petitioner. Therefore, a complaint was filed by the petitioner as against the respondent for an offence u/s 138 of the Negotiable Instruments Act (in short 'the N.I. Act') before the trial court in C.C.No.4666 of 2017. While so, after trial, the Court below had dismissed the said complaint filed by the petitioner by acquitting the respondent. Aggrieved over the same, the petitioner preferred the present petition seeking to grant leave to prefer an appeal against the said



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judgment dated 22.04.2024 in C.C.No.4666 of 2017.

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3. 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.

4. This Court perused the entire materials placed on record and the impugned judgment passed by the Court below.

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 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 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. With the above in mind, a perusal of the entire records reveals that in the complaint, the petitioner averred that he is running a firm in the name and style of Guru Chandra Engineering and on 28.04.2006, the respondent purchased the above said machineries from the petitioner firm, however, except the returned memos and legal notice, purchase bill, statement of account and other details were not marked before the trial court. Further, the balance due amount as per the averment of the petitioner is only Rs.5,50,000/-, however the cheque obtained from the respondent to the petitioner is only for Rs.2,00,000/- and for



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Rs.3,50,000/-, no information was furnished by the petitioner either in the complaint or in the cross-examination. Initial burden lies upon the petitioner to prove that was a legally enforceable debt, for which the impugned cheque was issued by the respondent. However, in the present case, initial burden itself is not discharged by the petitioner. The essential ingredient for the cause of action in favour of the petitioner is not proved by the petitioner and thereby, the petitioner failed to prove the mandatory ingredients which are necessary to prove the offence u/s 138 of the Act. Therefore, the trial court has decided that the petitioner failed to prove essential ingredient to constitute offence u/s 138 of the Act as against the respondent and acquitted the respondent, which cannot be said to be illegal or perverse. Therefore, this court is not inclined to interfere with the same.

8. Further, 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 of 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 court below.



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9. 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.

10. In the aforesaid 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.

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Index : Yes / No
Speaking order / Non-speaking order
NCC : Yes / No
sp

To

The III Fast Track Court, Metropolitan Magistrate, Saidapet, Chennai.



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M.DHANDAPANI, J.

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