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Crl.O.P.No.13577 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2024

CORAM:

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

Crl.O.P.No.13577 of 2024

in

Crl.A.SR.No.27545 of 2024

Selvambigai

...Petitioner

Vs.

Arumugam

...Respondent

Prayer in Crl.O.P.No.13577 of 2024: Criminal Original Petition filed under Section 378(5) Cr.P.C. to grant leave to the petitioner to prefer appeal against the impugned judgment of acquittal passed in STC.No.1128 of 2022 on the file of Judicial Magistrate No.I, Mettur.

Prayer in Crl.A.SR.No.27545 of 2024: Criminal Appeal filed under Section 378(4) Cr.P.C. to set aside the judgment of acquittal passed in STC.No.1128 of 2022 dated 28.03.2024 on the file of Judicial Magistrate No.I, Mettur subsequently sentence the respondent for the offence u/s. 138 r/w 142 of the Negotiable Instrument Act 1881 and also order to pay a compensation to the appellant.

For Petitioner : Mr.A.G.Narasimhan

ORDER



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This Criminal Original Petition has been filed to grant leave to the petitioner to file the above appeal against the judgment of acquittal passed in STC.No.1128 of 2022 dated 28.03.2024 on the file of Judicial Magistrate No.I, Mettur.

2. The case of the petitioner is that, the petitioner/complainant and the respondent/accused are neighbours and on such acquittance, on 05.04.2022, the respondent borrowed a sum of Rs.11,00,000/- from the petitioner and he promised to repay the same within a period of two months and had also issued a post dated cheque bearing No.238991 dated 03.06.2022 on the same day towards security. Since the respondent failed to repay the said loan amount, the petitioner presented the above said cheque for collection, however, the same was returned with an endorsement 'Drawers Signature differs'. Thereby, the petitioner sent a legal notice to the respondent on 17.06.2022, which evoked no response. Therefore, left with no other alternative, the complaint was filed by the petitioner for an offence u/s 138 of the NI Act before the trial court in STC.No.1128 of 2022.

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 were examined and Exs.P-1 to P-6 were marked. On the side of the respondent, D.W.1 to D.W.3 were examined and Exs.D-1 to D3 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 to prefer an appeal against the said order.

3. Learned counsel appearing for the petitioner submitted that even though the petitioner had clearly deposed before the trial court that she generated the loan amount from the marriage gifts of her daughter and also a part of the amount was arranged by her husband, who is working in the corporation by availing loan, however, all those facts have not been properly considered by the court below while passing the impugned order acquitting the respondent and dismissing the petitioner's complaint solely on the ground that the petitioner failed to establish the source from which the



petitioner generated the loan amount is wholly unsustainable and therefore, interference is warranted with the findings recorded by the court below.

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 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 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 cheque given by the accused to the 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 came to be dismissed.

8. It is not in dispute that the dishonoured cheque belongs to the accused. The alleged date of borrowing is in the year 2022 and in order to acknowledge the loan, the disputed post dated cheque was issued by the respondent. A perusal of the documents placed on record particularly the impugned judgment reveals that, though the trial court had dismissed the petitioner's complaint solely on the ground that the petitioner failed to establish the source of generation of loan advanced to the respondent, however, the major point to be noted is that, when the respondent had clearly



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disputed the signature in the cheque, no steps have been taken by the petitioner to send the signature for expert opinion and no documentary evidence has been produced by the petitioner either before the trial court or before this Court to prove that the signature in the cheque belongs to the respondent and the petitioner has miserably failed to establish his case.

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



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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.

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 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.

20.06.2024

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



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M.DHANDAPANI, J.

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To

The Judicial Magistrate No.I,
Mettur.

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in
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