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Crl.O.P.No.14232 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2024

CORAM:

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

Crl.O.P.No.14232 of 2024
in Crl.A.SR.No.29224 of 2024

M/s.Raj Paper Mart,
rep.by its Proprietrix,
A.Kulandai Therasa

... Petitioner

Vs.

G.Surendar
Proprietor of Shri Kalaimagal Prints and Packs

... Respondent

Prayer: Criminal Original Petition filed under Section 378 (4) of Cr.P.C., to grant Special Leave to appeal to the petitioner against the judgment dated 29.04.2024 passed in C.C.No.57 of 2019 by the learned Fast Track Court No.I, Judicial Magistrate, Coimbatore.

For Petitioner : Mr.K.J.Saravanan

ORDER

Assailing the order of acquittal dated 12.9.2023 passed in CC.No.57 of 2019 by the Judicial Magistrate, Coimbatore, 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 is a firm, doing



business as a dealer of Paper and Paper Boards and the respondent is the customer of the petitioner. The respondent approached the complainant to supply the goods on credit basis and on his request, the petitioner supplied the goods worth about Rs.4,18,849/- and the same was not paid. After made a repeated request, the respondent issued three post daed cheques on 24.07.2018 with three different dates. The petitioner deposited the cheques for encashment, all the cheques were returned with an endorsement "funds insufficient". Therefore, the petitioner caused a legal notice to the respondent on 28.12.2018, which was received by the respondent and the reply notice was issued by the respondent with false averments. However, the respondent did not pay amount. Therefore, the petitioner was constrained to file the complaint.

3. 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.s 1 and 2 were examined and Exs.P-1 to P-10 were marked. Neither any oral evidence nor any documents were marked by the respondent. On the basis of oral and documentary evidence, the court below found the respondent not guilty of the offence and, accordingly, acquitted the



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respondent, aggrieved by which the present petition has been filed seeking leave to appeal.

4. 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 cheques viz Ex.P1 to P3 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.

5. This Court gave its anxious consideration to the submission advanced by the learned counsel for the petitioner and perused the materials available on record.

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 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.

8. With the above in mind, a perusal of the materials on record reveal that the respondent had denied that the cheques were given towards the discharge of a legally enforceable debt. In fact, it is the case of the respondent that the petitioner is a Firm, the respondent had given the cheques to the petitioner, which has been misused.



9. 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. Further, in the chief and cross examination of PW1 and PW2 have given contrary evidence to each other. PW1 stated in her cross examination that the petitioner firm is run by her son/PW2 for about two years and she did not know about the cheques given by the respondent. But the PW2, in the chief examination, he is working as a Manager in the petitioner Firm. In his cross examination, PW2 has deposed that he is running the firm for 13 years.

10. It is seen that the evidence adduced by the PW1 is admissible and however, the same has not been proved by her and 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.

11. 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.



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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.

12. 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.

13. 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.

19.06.2024

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Index:Yes/No

Speaking/Non speaking order

To

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



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M.DHANDAPANI,J.

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