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CRL.O.P.No.13193 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2024

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

CRL.O.P.No.13193 of 2023

in

Crl.A.SR.No.12115 of 2023

C.Mathiyalagan

... Petitioner

Vs.

Naveed Ahamed

... Respondent

Prayer in Crl.O.P.No.13193 of 2023: This Criminal Original Petition has been filed under Section 482 of Cr.P.C. to grant Special Leave to the appellant to prefer an appeal against the Judgment dated 22.11.2022 made in C.C.No.195 of 2011 passed by learned Judicial Magistrate, Gudiyatham, Vellore District.

Prayer in Crl.A.SR.No.12115 of 2023: This Criminal appeal has been filed under Section 378(4) of Cr.P.C. to set aside the judgment dated 22.11.2022 made in C.C.No.195 of 2011 passed by learned Judicial Magistrate, Gudiyatham, Vellore District.

For Petitioner : Mr.R.Chandrasekaran

For Respondent : No Appearance



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ORDER

WEB COPY Assailing the order of acquittal dated 22.11.2022 passed in C.C. No.195/2011 by the Judicial Magistrate, Gudiyatham, Vellore District, 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 and the respondent are family friends and for the purpose of personal household expenses, the respondent obtained Rs.1.50 Lakhs from the petitioner and promised to repay the same within three months. On demand to repay the same, the respondent issued cheque No.463727 dated 23.03.2011 to discharge the said liability. However, the said cheque, upon deposit was returned by the petitioner's bankers on 12.08.2011 on the ground of insufficient funds. Therefore, the petitioner caused a legal notice to the respondent on 2.9.2011, which was received by the respondent on 3.9.2011, to which reply was given by the respondent, but the cheque amount was not paid. 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



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of the petitioner, P.W.1 was examined and Exs.P-1 to P-8 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 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 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.

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



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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 has not disputed the cheque nor denied his signature. But the respondent has denied knowledge of the complainant. In fact, the respondent had denied that the cheque was given towards the discharge of a legally enforceable debt. It is the case of the respondent that he has not



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borrowed any money from the petitioner.

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. A perusal of the order of the court below reveals that Ex.P-4 demand notice shows that the respondent has borrowed money, but the complaint and the deposition of P.W.1 runs counter to the same. There is no material evidencing payment of loan to the respondent and also the persons, in whose presence the amount was given to the respondent. When the respondent has denied issuing the cheque to the petitioner for the purpose of discharging a legally enforceable debt, a duty is cast on the petitioner to prove the disbursement of loan to the respondent. Further, there is no material which evidences the financial capacity of the petitioner to advance a loan of Rs.1.5 Lakhs to the respondent. In the absence of any material to prove the loan transaction between the petitioner and the respondent, the claim of the petitioner that there is a legally enforceable debt towards the discharge of which the cheque was given by the respondent is wholly unfathomable.

10. Therefore, in the absence of any material to establish the financial



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capacity of the petitioner and also establish that there is a legally enforceable debt, towards the discharge of which the cheque was 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. 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 aforesaid circumstances, no case is made out by the petitioner for grant of leave and, accordingly, this criminal original petition is



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dismissed. Consequently, the criminal appeal is rejected at the SR stage itself.

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Index: Yes/No
Internet: Yes/No
NCC : Yes/No
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M.DHANDAPANI , J.



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To

The Judicial Magistrate, Gudiyatham, Vellore District

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in

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