



Crl.O.P.No.14554 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.14554 of 2024

in

Crl.A.SR.No.27247 of 2024

R.Siva

... Petitioner

Vs.

S.Balasubramanian

... Respondent

Prayer in Crl.O.P.No.14554 of 2024 : Criminal Original Petition filed u/s.378(4) of the Code of Criminal Procedure, seeking to grant leave to the petitioner to file an appeal against acquittal of the respondent in C.C.No.3605 of 2013 on the file of III FTC, Metropolitan Magistrate, Saidapet, Chennai.

Prayer in Crl.A.SR.No.27247 of 2024 : Criminal Appeal filed under Section 378 of the Code of Criminal Procedure Code, to set aside the judgment of the learned Metropolitan Magistrate III, Fast Track Court, passed C.C.No.3605 of 2013 and to convict the respondent for the offence committed under section 138 of NI Act and to award compensation of twice the cheque amount.

For Petitioner : Mr.V.Ramamurthy



Crl.O.P.No.14554 of 2024

WEB COPY

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, Saidapet, Chennai in C.C.No.3605 of 2013 dated 28.03.2024.

2. The case of the petitioner/complainant is that, he entered into a lease agreement dated 18.02.2011 with the respondent/accused in respect of the property measuring to an extent of 5128 sq.ft. situated at No.37/7, 100 Feet Road, Vadapalani, Chennai – 600 026 for a sum of Rs.10,00,000/- as lease amount. The leased out property was an uneven pit land which could not be used for any purpose without filling the same. The respondent had authorized the petitioner to level the land and to make it fit for usage and promised to pay the actual expenses incurred by petitioner, thereby the land was filled and the petitioner had spent a sum of Rs.20,00,000/- and thereafter, the petitioner is running a business in the name of Thanjai Vehicle parking duly registered with Central Excise Department and other Departments. The rental parking area in the leased property did not fetch



Crl.O.P.No.14554 of 2024

adequate income as compared to the petitioner investment and hence, he decided to close the business and requested the respondent to refund the lease amount of Rs.10,00,000/- and Rs.20,00,000/- which are the actual expenses incurred by petitioner to level the aforesaid property totalling to Rs.30,00,000/-. In order to discharge the liability, the respondent had issued cheque bearing No.009392 dated 25.03.2013 for Rs.30,00,000/- drawn on Bank of Baroda, Vadapalani Branch, Chennai – 600 026. When the petitioner presented the said cheque for collection, the said cheque was returned vide return memo dated 13.04.2013 for the reason "Funds Insufficient". Thereafter, the petitioner had issued a legal notice dated 20.04.2013 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 not come forward to pay the cheque amount but sent reply notice dated 25.04.2013. 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.3605 of 2013. 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



CrI.O.P.No.14554 of 2024

seeking to grant leave to prefer an appeal against the said judgment dated 28.03.2024 in C.C.No.3605 of 2013.

3. The 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



Crl.O.P.No.14554 of 2024

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. With the above in mind, a perusal of the entire records reveals that in the complaint, the petitioner claimed that he entered into a lease agreement with the respondent dated 18.02.2011 in respect of the property measuring to a extent of 5128 sq.ft. for a sum of Rs.10,00,000/- as lease amount for running the vehicle parking. However, the petitioner has not produced the said lease agreement before the trial court and he has not produced any evidence to prove that Rs.10,00,000/- was paid to the



Crl.O.P.No.14554 of 2024

WEB COPY

respondent in view of lease agreement. Further, in the complaint, though it is claimed by the petitioner that the said vehicle parking was run by the petitioner after duly registering with Central Excise Department and other Departments, however, in order to prove the same, no documents was filed before the trial court. It is also claimed by the petitioner that the respondent has authorized the petitioner to level the land and assured that he will pay the expenses incurred by the petitioner, thereby he has spent Rs.20,00,000/- however, in this regard, the petitioner has not filed any proof before the trial court. This court is unable to understand the fact that how the petitioner has spent a sum of Rs.20,00,000/- for levelling the land to an extent of 5,128 sq.ft., which is unbelievable. Such a stand taken by the petitioner is improbable and hence, the case of the petitioner cannot be accepted. Considering all the above aspects, the trial court had dismissed the complaint filed by the petitioner, 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



Crl.O.P.No.14554 of 2024

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.

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 aforestated 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.

21.06.2024

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



CrI.O.P.No.14554 of 2024

The III FTC, Metropolitan Magistrate, Saidapet, Chennai.

WEB COPY



WEB COPY



Crl.O.P.No.14554 of 2024

M.DHANDAPANI, J.

sp

Crl.O.P.No.14554 of 2024
in
Crl.A.SR.No.27247 of 2024

21.06.2024