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Crl.OP.No.14494 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.04.2024

CORAM:

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

Crl.OP.No.14494 of 2023
in
Crl.A.SR.No.25897 of 2023

M.Sundar

...Petitioner / Appellant

Vs.

P.Pugazhenth

...Respondent

Prayer in Crl.OP.No.14494 of 2023: Petition filed under Section 482 of Code of Criminal Procedure to grant special leave and permit the petitioner to prosecute the above appeal filed against the order of acquittal dated 24.03.2023 made in C.C.No.364 of 2019 on the file of the Judicial Magistrate, Fast Track Court (Magistrate Level), Alandur.

Prayer in Crl.A.SR.No.25897 of 2023: Appeal filed under Section 378(4) of Code of Criminal Procedure to set aside the order of acquittal dated 24.03.2023 made in C.C.No.364 of 2019 on the file of the Judicial Magistrate, Fast Track Court (Magistrate Level) Alandur.



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For Petitioner : Mr.D.Lakshmipathy

ORDER

Assailing the order of acquittal dated 24.03.2023 passed in C.C. No.364/2019 by the Judicial Magistrate, Fast Track Court, Magisterial Level, Alandur, the present petition has been filed by the petitioner seeking leave to file appeal.

2. It is the case of the petitioner that the respondent approached the petitioner for loan of Rs.4 Lakhs for family and business commitments and between August, 2018 and October, 2018, the petitioner gave the loan to the respondent in instalments, which the respondent promised to repay in six months. On demand to repay the same, the respondent issued cheque No.592650 dated 20.08.2019 to discharge the said liability. However, the said cheque, upon deposit was returned by the petitioner's bankers on 03.10.2019 on the ground of insufficient funds. Therefore, the petitioner caused a legal notice to the respondent on 11.10.2019, which was received by the respondent on 18.10.2019, to which there was no reply given by the respondent. Therefore, the petitioner was constrained to file the complaint.



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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.1 was examined and Exs.P-1 to P-4 were marked. On the side of the respondent, while Ex.D-1 was marked, there was no oral evidence adduced. 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 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



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debt. It is the case of the respondent that he has not 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 no direct proof of payment of the amount lent to the respondent has been filed. Nor is there a written agreement evidencing the payment of the loan and there are also no receipts with regard to such payments nor is there any security taken from the respondent at the time of grant of loan. The trial court has further held that the dates on which the petitioner has lent money to the respondent has not been established. In fact, it is the case of the petitioner that the cheque was obtained from the respondent in blank in which the petitioner has filled up the amount. This clearly shows that there is neither admission of the amount filled up in the cheque nor the cheque is purported to have been issued by the respondent towards the discharge of a legally enforceable debt. 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 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 dismissed. Consequently, the criminal appeal is rejected at the SR stage itself.



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

To
Judicial Magistrate, Fast Track Court (Magistrate Level), Alandur.

M.DHANDAPANI, J.

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