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CrI.O.P.No.14252 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2024

CORAM:

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

CrI.O.P.No.14252 of 2024
in CrI.A.SR.No.28934 of 2024

Maruthamuthu

... Petitioner

Vs.

V.Malar

... 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 10.04.2023 passed in STC.No.99 of 2021 by the learned Judicial Magistrate, FTC (Magisterial Level), Poonamallee.

For Petitioner : Mr.S.Srinivasan

ORDER

Assailing the order of acquittal dated 10.04.2023 passed in STC.No.99 of 2021 by the Judicial Magistrate, FTC, Poonamallee, 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 has borrowed a sum of Rs.3,00,000/- on 30.07.2013 for interest rate of 2% from the petitioner for his family purpose. For the purpose of discharging of the above said legally



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enforceable debt, the respondent executed promissory note and he pay the interest till October 2020 and he executed the cheque baring No.122219 dated 05.11.2020 for a sum of Rs.3,00,000/- drawn on Canara Bank Branch. As per instruction of the respondent, the petitioner deposited the cheque for encashment and the same was returned with an endorsement "Account closed". Therefore, the petitioner caused a legal notice to the respondent on 09.01.2021, which was received by the respondent and he has not replied and not paid the 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, he examined himself as P.W.1 and Exs.P-1 to P-6 were marked. On the side of the respondent, no witness was examined and one document was 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.



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 had denied that the cheque which was given towards the discharge of a legally enforceable debt. In fact, it is the case of the respondent that the petitioner's wife and daughter was running a chit, the respondent had given the cheque to the petitioner for collateral security, 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, as if, the respondent borrowed Rs.3 lakhs in the year 2013 and the cheque was issued by



the respondent in the year 2020. On perusal of the chief examination of PW1, it is seen that he left India in the year 2013 and he came back from abroad only in the year 2019. Whereas he stated in the complaint that he received the interest from the respondent till the year 2020 and principle amount has not paid. However, in the cross examination, he admitted that his wife and daughter was running a chit business, in which, the respondent is also a member of the said chit and the entire amount was paid by the respondent to the account of the petitioner's wife and daughter, which was admitted by the petitioner. However, all the transaction was not disclosed in the complaint.

10. It is seen that the petitioner has not approached the trial Court with clean hands and 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



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committed by the courts below.

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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.

19.06.2024

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Index:Yes/No

Speaking/Non speaking order

To

The Judicial Magistrate, FTC (Magisterial Level)
Poonamallee.

M.DHANDAPANI,J.

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