



Crl.O.P.No.17360 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2024

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

Crl.O.P.No.17360 of 2024

in

Crl.A.SR.No.28897 of 2024

M/s.ElfoTech Electro Chemicals Ltd.,
Rep. by its Director,
Mr.Kanakurana,
Factory Plot at No.84, Opposite PIPDIC, Industrial Estate,
Kirumampakkam, Bahour Commune,
Pondicherry. ... Petitioner

Vs.

1.M/s.Jain Bro. Gas Refilling (P) Ltd.,
Head Office 92/3, Basant Balwant Market,
Chaudhary More, G.T.Road,
Gazhiabad, U.P.,
Rep. by its Managing Director.

2.Vinodkumar Jain @ V.K.Jain

3.Shashi Jain ... Respondents/A1 to A3

Prayer in Crl.O.P.No.17360 of 2024 : Criminal Original Petition filed
u/s. 378(4) of the Code of Criminal Procedure, seeking to grant special
leave to the petitioner/appellant to appeal from judgment and order of



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acquittal in C.C.No.128 of 2008 passed by the learned II Additional District Munsif at Puducherry (Conferred with the powers of the Magistrate).

Prayer in Crl.A.SR.No.28897 of 2024 : Criminal Appeal filed under Section 378 of the Code of Criminal Procedure Code, to set aside the acquittal order of the learned II Additional District Munsif at Puducherry (Conferred with the powers of the Magistrate) in C.C.No.128 of 2008 dated 22.12.2023 and convict the accused/respondents.

For Petitioner : Ms.Akshayaa Benjamin

ORDER

This Criminal Original Petition has been filed seeking to grant special leave to the petitioner to file an appeal against the impugned order passed by the learned II Additional District Munsif at Puducherry (Conferred with the powers of the Magistrate) in C.C.No.128 of 2008 dated 22.12.2023.

2. The case of the petitioner is that, he is the Director of M/s.ElfoTech Electro Chemicals Ltd., which is manufacturing Calcium Carbide. The respondents 2 and 3/A2 and A3 are the Managing Directors



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of the 1st respondent company/A1 and they were actively involved in the day-to-day affairs of the entire business of the said company and they are liable and responsible for the conduct and business activities of the company. Whiles, the 2nd respondent being the Managing Director of the 1st respondent company, towards the part payment of the due amount payable to the Electricity Department, Pondicherry for the month of November, 2005 and also for the due amount payable to the Central Excise Department and Sales Tax Department, Pondicherry payable for the month of December 2005, has issued a cheque to the petitioner/complainant for a sum of Rs.25,00,000/- vide cheque bearing No.084406 dated 15.12.2005 drawn on Bank of India, Gaziabad Branch, Gaziabad 601101 in favour of the petitioner. When the petitioner presented the cheque on 01.06.2006, the said cheque returned as dishonoured on 16.06.2006 for the reason 'Exceeds Arrangement' in the accused account. Thereafter, the petitioner had issued a legal notice dated 07.07.2006 to the respondents through RPAD and by courier service calling upon them to come forward to settle the due amount to be payable on the above said cheque within 15 days. The said notice sent to the 1st respondent was served on 13.07.2006, however, the respondents 2 and 3



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deliberately not received the said notice though due intimation was given by the postal authority. Therefore, a complaint was filed by the petitioner as against the respondents 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.128 of 2008. While so, after trial, the Court below had dismissed the said complaint filed by the petitioner by acquitting the respondents. Aggrieved over the same, the petitioner preferred the present petition seeking to grant special leave to prefer an appeal against the said order dated 22.12.2023 in C.C.No.128 of 2008.

3. Learned counsel for the petitioner submitted that the trial court acquitted the respondents/accused solely on the ground that there was a material alteration in the cheque/Ex.P.3. She also submitted that the alteration is only in respect of part portion of the name of the company i.e., Chemicals Limited and the cheque amount written in words. Except these alterations, no other alteration is made in the cheque/Ex.P.3 and the said alteration is not affected u/s 87 of the N.I. Act. However, the trial court held that there is a material alteration, without the consent of the accused/drawer by referring Section 87 of the N.I. Act, which has



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affected the petitioner's case. Further, she submitted that the accused had not denied his signature in the cheque/Ex.P.3 and not denied the issuance of cheque to the petitioner though they stated that the cheques was issued as a security as per the MOU to the petitioner, they have not adduced proper evidence to prove their case. Once the signature was admitted and failed to prove their case by the accused, the petitioner is entitled for statutory presumptions in favour of the petitioner and the burden to rebut the said presumption is upon the accused, however, the accused had not rebutted the presumption by adducing appropriate evidence. Therefore, interference is warranted with the findings recorded by the court below.

4. This Court heard the learned counsel for the petitioner and perused the entire materials placed on record, including the impugned order 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



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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 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 the 2nd respondent issued a cheque/Ex.P.3 for payment of the due amount payable to the Electricity Department, Pondicherry and the Central Excise Department and Sales Tax Department, Pondicherry in favour of the petitioner. The



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main issue for consideration in this matter is whether the cheque issued in favour of the petitioner for the due payable to the Electricity Department, Pondicherry and the Central Excise Department and Sales Tax Department, Pondicherry is a legally enforceable debt or not. In the cross-examination, the petitioner deposed in respect of MOU for purchasing the petitioner company by the respondents and in order to clear the dues payable to the Electricity Department and the Central Excise Department and Sales Tax Department, Pondicherry, the 2nd respondent issued a cheque in favour of the petitioner. Unless the sale is concluded in between the petitioner and the 1st respondent and it is conveyed in favour of the respondents, then it is the duty of the 2nd respondent to pay the dues to the petitioner. However, in the present case, mere MOU will not confer the petitioner to claim amount from the 2nd respondent. It is only an informal arrangement in between the petitioner and the 1st respondent. Therefore, it is not legally enforceable debt and apart from that, there was a material alteration in the cheque/Ex.P.3, which was admitted by the petitioner before the trial court and his over-writting the part portion of the company's name viz., Chemicals Ltd and twenty five lakhs in words. A perusal of the



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cheque/Ex.P.3, it is found that the cheque was dated 15.07.2005 and subsequently it has been altered as 15.12.2005. The altering of No.7 into No.12 is amount to material alteration and the same was not affirmed by the drawer of the cheque and the said material is contrary to Section 87 of the N.I. Act. Hence, the trial court dismissed the complaint by the petitioner, which cannot be said to be perverse, illegal or arbitrary.

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 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.



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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.

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

To

The II Additional District Munsif, Puducherry.



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M.DHANDAPANI, J.

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