



Crl.O.P.No.17088 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2024

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

Crl.O.P.No.17088 of 2024

in

Crl.A.SR.No.31376 of 2024

M.Viswanathan

... Petitioner

Vs.

C.Satheesh Kumar

... Respondent

Prayer in Crl.O.P.No.17088 of 2024 : Criminal Original Petition filed u/s.378(4) of the Code of Criminal Procedure, seeking to grant special leave and permit the petitioner to prosecute the above appeal filed against the judgment of acquittal dated 20.11.2023 made in C.A.No.16 of 2022 on the file of III Additional District and Sessions Judge, Vellore @ Tirupattur.

Prayer in Crl.A.SR.No.31376 of 2024 : Criminal Appeal filed under Section 378 of the Code of Criminal Procedure Code, to allow the appeal and set aside the judgment of the III Additional District and Sessions Judge, Vellore @ Tirupattur passed in C.A.No.16 of 2022 and revised the judgment of the learned Judicial Magistrate, Vaniyambadi passed in S.T.C.No.213 of 2015.



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For Petitioner : Mr.V.Krishnamoorthy

For Respondent : Mr.Arun Anbumani

ORDER

This Criminal Original Petition has been filed seeking to grant leave to the petitioner to file an appeal against the impugned order passed by the learned III Additional District and Sessions Judge, Vellore @ Tirupathur in C.A.No.16 of 2022 dated 20.11.2023.

2. The case of the petitioner is that, the respondent/accused is the childhood friend of the petitioner/complainant and he used to borrow money. As such the respondent has totally borrowed a sum of Rs.5,00,000/- from the petitioner since March 2014 and in order to discharge his liability, he issued a cheque No.114818 dated 15.02.2015 drawn on Indian Bank, Vaniyambadi. When the cheque was presented by the petitioner for collection through Indian Bank, Vaniyambadi on 02.03.2015, the same was dishonoured on the ground of “Insufficient Funds”. Thereafter, the petitioner caused a legal notice dated 25.03.2015



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to the respondent calling upon the respondent to pay the amount within 15 days from the receipt of the notice, for which, the respondent issued a reply notice on 13.04.2015 with false allegations. Thereafter, a complaint was filed by the petitioner as against the respondent for an offence u/s 138 of the Negotiable Instruments Act, 1881 (in short 'the N.I. Act') before the trial court in S.T.C.No.213 of 2015. After adjudication, the trial court vide judgment dated 23.02.2022 had convicted the respondent and sentenced him to undergo simple imprisonment for a period of one year and directed the respondent to pay a sum of Rs.10,00,000/- as compensation to the petitioner. Aggrieved by the same, the respondent has filed an appeal before the learned III Additional District and Sessions Judge, Vellore @ Tirupattur in C.A.No.16 of 2022 and the lower appellate court vide impugned judgment dated 20.11.2023 had allowed the appeal, setting aside the judgment passed by the trial court. Challenging the same, the petitioner preferred the present petition seeking to grant leave to prefer an appeal against the said judgment dated 20.11.2023 in C.A.No.16 of 2022.

3. Learned counsel appearing for the petitioner submitted that



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the cheque was issued by the respondent, which stood dishonoured and the respondent has not disputed his signature in the cheque, which clearly shows that there is a legally enforceable debt, which has not been discharged by the respondent. Further, he 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. Thereby, the trial court has rightly convicted the respondent, however, the lower appellate court has set aside the conviction judgment passed by the trial court. Further, the lower appellate court had miserably failed to consider the above aspects and drawn adverse inference as against the petitioner and acquitted the respondent, which is wholly unsustainable and the same deserves interference at the hands of this Court.

4. Learned counsel appearing for the respondent submitted that though the respondent has taken a defence before the trial court that the petitioner is a childhood friend and taking advantage of the same, the



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petitioner has taken the cheque from the respondent and presented the cheque in view of the civil dispute in between his father-in-law and the father of the respondent in O.S.No.58 of 2015. Further, originally the petitioner's father-in-law filed a suit as against the respondent's father in O.S.No.113 of 2013 on the file of the Judicial Magistrate, Vaniyambadi, Vellore. Subsequently, it was transferred to Sub Court, Vaniyambadi and re-numbered as O.S.No.58 of 2015, in which the respondent's father has filed a counter/Ex.D.4 mentioning the details of the cheque and it is presumed that the cheque was issued prior to the year 2013 and the same was misused by the respondent in the year 2015, thereby the lower appellate court acquitted the respondent, which cannot be interfered with. Accordingly, he prays for dismissal of this petition.

5. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondent and perused the materials available on record.

6. 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,



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who has seen 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 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.

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 trial court.

8. With the above in mind, a perusal of the entire records reveals that in the complaint, the respondent has received a sum of Rs.5,00,000/- on various occasions to meet out the expenses incurred by him and



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executed the cheque dated 15.02.2015 on Indian Bank, Vaniyambadi and upon the instructions the cheque was presented on 02.03.2015 and since it was dishonoured, suitable steps were taken and the case u/s 138 of the Act was filed. Though the petitioner has claimed that he has given Rs.5,00,000/- to the respondent, however, he has not produced any evidence before the courts below to prove the same. Further, the respondent has taken a defence before the lower appellate court that during the alleged time of issuance of cheque, there was a dispute in between the family of the petitioner and the respondent's family in view of the money transactions between the petitioner's father-in-law and the respondent's father in respect of a property and other transactions. It is to be seen that the petitioner has stated that the amount was borrowed on various occasions, however there is no valid reasons for such borrowal and the petitioner has not stated the manner in which the payment was made and the days on which the payment was made either in the notice or the complaint. It at all the petitioner has given the loan, he would have stated all the particulars and the statement of accounts. Further, it is seen from the evidence of the petitioner as well as the respondent that there could be no chance to issue a cheque on the said date, since it is an



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admitted fact that there is a dispute between their family members prior to the date of the cheque. Therefore, the lower appellate court has arrived at a conclusion that the cheque has been used to take revenge due to the difference of opinion between the family members of the petitioner and the respondent and there is no legally enforceable debt. This court is of the view that though the trial court has failed to appreciate the evidence on record in proper perspective and has erred in convicting the respondent, the lower appellate court has rightly appreciated the evidence and acquitted the respondent, which cannot be said to be perverse, illegal or arbitrary. Hence, this court is not inclined to interfere with the same.

9. 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.

10. No infirmities or other materials are placed which



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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.

11. In the aforesaid 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.

25.07.2024

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

To

- 1.The III Additional District and Sessions Judge, Vellore @ Tirupattur.
- 2.The Judicial Magistrate, Vaniyambadi.



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M.DHANDAPANI, J.

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