



WEB COPY



Crl.O.P.No.1670 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.04.2024

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

Crl.O.P.No.1670 of 2023
in
Crl.A.SR.No.18672 of 2022

K.Renu

... Petitioner/Appellant

Vs.

Suresh Kumar

... Respondent/Respondent

Prayer in Crl.O.P.No.1670 of 2023 : Criminal Original Petition filed u/s.378(2) of the Code of Criminal Procedure, seeking to grant leave to prefer appeal against the acquittal rendered in Judgment dated 24.03.2022 passed in STC.No.31 of 2017 by the Judicial Magistrate Fast Track (Magisterial Level) at Tiruvannamalai.

Prayer in Crl.A.SR.No.18672 of 2022 : Criminal Appeal filed under Section 378(4) of the Code of Criminal Procedure Code, to set aside the Judgment dated 24.03.2022 passed in STC No.31 of 2017 by the Judicial Magistrate Fast Track (Magisterial Level) at Tiruvannamalai.

For Petitioner : Mr.P.G.Thiyagu

For Respondent : Not Ready in Notice



Crl.O.P.No.1670 of 2023

ORDER

WEB COPY

Assailing the order of acquittal dated 24.03.2022 passed in S.T.C.No.31 of 2017 by the learned Judicial Magistrate, Fast Track Court, Magisterial Level, Tiruvannamalai, the present petition has been filed by the petitioner seeking leave to file appeal.

2. It is the case of the petitioner that he is dealing in the business of automotive spare parts for agricultural machinery. One sales executive of Jeyam Automotives Pvt. Ltd., introduced the respondent to the petitioner for the purpose of purchase of rotator machines and blades. On 28.9.2016, the respondent along with the said sales executive came to the shop of the petitioner and purchased rotor machines and blades and assured to pay the amount due in two months. Thereafter, the respondent purchased rotator machines and blades on 5.10.2016 and, thereafter, on various dates and in this regard, handed over a cheque book containing 50 leaves with the petitioner, which could be used for the purpose of realising the amount due from the respondent. In spite of supply of machinery, the respondent did not pay the amount due from the months of October, 2016 to February, 2017 and in spite of repeated demands, the



CrI.O.P.No.1670 of 2023

WEB COPY

respondent did not pay the amount. On 12.3.2017, the respondent informed the petitioner to present two cheques for collection for a sum of Rs.9 Lakhs each on 15.3.2017 and when the said cheques were presented through the petitioner's bankers', the same was returned with endorsement "insufficient funds". Therefore, the petitioner lodged a complaint with the police and at the intervention of the police officials, the respondent admitted his liability and promised to repay the amounts. The petitioner, at the insistence of the police authorities and the advocate of the respondent, returned the two dishonoured cheques to the respondent and two fresh cheques for a sum of Rs.19.45 Lakhs and Rs.1.10 Lakhs was given on 21.3.2017 by the respondent towards the liability.

2.1. It is the further case of the petitioner that the respondent issued a legal notice on 13.3.2017, received by the petitioner on 21.3.2017 as if the petitioner's henchmen were threatening the respondent to settle the debt along with police authorities. The respondent also issued legal notice to the police authorities alleging illegal threatening at the hands of the law enforcing agency. Thereafter, the law enforcing officials asked the



CrI.O.P.No.1670 of 2023

petitioner to approach the respondent through legal process for getting the debts settled. Therefore, the petitioner issued a legal notice on 16.5.2017 to the respondent to settle the debts by way of cash or to honour the cheque amount, which notice was received by the respondent on 18.5.2017. However, as there was no response, the petitioner presented the cheques for collection on 21.3.2017, which were returned dishonoured citing insufficiency of funds. Thereafter, the petitioner issued legal notice and as there was no response from the respondents, filed the present 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, P.W.s 1 to 4 were examined and Exs.P-1 to P-17 were marked. On the side of the respondent, D.W.s 1 to 4 were examined but no documents were 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.



CrI.O.P.No.1670 of 2023

WEB COPY

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



Crl.O.P.No.1670 of 2023

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. With the above in mind, a perusal of the materials on record reveals that the respondent had denied knowledge of the petitioner. In fact, it is the specific case of the respondent that due to coercion and threat of the police officials, the cheques in question were obtained from him. It is the further stand of the respondent that he has not purchased any machinery from the petitioner. In this regard, the court below had gone in extenso into the deposition of the witnesses on both sides, both in chief and cross and had rendered a finding that the sales alleged to have been made by the petitioner to the respondent have not been established through documentary evidence. Further finding has been rendered by the court below that initially two cheques were dishonoured for a sum of Rs.18 Lakhs, yet two other cheques are alleged to have been given by the respondent for a sum of Rs.20,55,000/-. In all the court below has held



Crl.O.P.No.1670 of 2023

that the quantum of legally enforceable debt has not been established and that there is no proof of the fact that there is a legally enforceable debt which the respondent has to pay to the petitioner. In view of the fact that the respondent has raised a probable theory and rebutted the presumption mentioned u/s 139 of the Act, duty is cast upon the petitioner to establish the subsistence of a legally enforceable debt and the liability of the respondent to discharge the same and the petitioner having not filed any proper document to establish the same, the court below was fully justified in rejecting the complaint filed by the petitioner.

8. 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.

9. No infirmities or other materials are placed which necessitates relook into the findings recorded by the courts below and granting leave



Crl.O.P.No.1670 of 2023

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.

10. 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.

23.04.2024

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

To

The Judicial Magistrate Fast Track (Magisterial Level) at
Tiruvannamalai.



WEB COPY



Crl.O.P.No.1670 of 2023

M.DHANDAPANI, J.

sp

Crl.O.P.No.1670 of 2023
in
CrI.A.SR.No.18672 of 2022

23.04.2024