



WEB COPY



Crl.O.P.No.26911 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.04.2024

CORAM:

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

Crl.O.P.No.26911 of 2022

in

Crl.A.Sr.No.49430 of 2022

A.Mark Antony

...Petitioner

Vs.

S.Raja Lemorji

...Respondent

Crl.O.P.No.26911 of 2022: Petition filed under Section 378(4) of the Code of Criminal Procedure Code Act to grant leave to the appellant to file the above appeal against the acquittal order dated 17.08.2022 in S.T.C.No.11 of 2018 on the file of the Judicial Magistrate No.1, Perambalur.

Crl.A.Sr.No.49430 of 2022: Criminal Appeal filed under Section 378 of the Code of Criminal Procedure to call for and set aside the judgment dated 17.08.2022 in S.T.C.No.11 of 2018 on the file of the Judicial Magistrate No.1, Perambalur.

For Petitioner : Mr.C.Vidhusan



CrI.O.P.No.26911 of 2022

WEB COPY

ORDER

This Criminal original petition has been filed seeking to grant special leave to the petitioner to prefer an appeal against the acquittal order dated 17.08.2022 made in S.T.C.No.11 of 2018 on the file of the Judicial Magistrate No.1, Perambalur.

2. The case of the petitioner is that, the petitioner is a retired teacher and the accused persons in the complaint are father and son and the petitioner/complainant and the 1st accused in the complaint are friends and they have known each other for a long period of time and on such acquittance, in the year 2016, the accused persons have borrowed a sum of Rs.2,57,000/- from the petitioner and promised to repay the same within one month, which was not done so by the accused persons. Thereafter, upon repeated demands made by the petitioner, the accused have jointly issued a cheque bearing No.115036 dated 15.05.2017 for a sum of Rs.2,57,000/- and when the said cheque was presented by the petitioner for collection, the same was returned with endorsement 'Funds Insufficient'. Thereby, the petitioner sent a legal notice dated 16.08.2017 and the accused persons



CrI.O.P.No.26911 of 2022

while acknowledging the receipt of the same, have not taken any steps to repay the borrowed amount. Therefore, left with no other alternative, the complaint was filed by the petitioner for an offence u/s 138 of the Act before the trial court in S.T.C.No.11 of 2018. However, the trial court, had mechanically dismissed the said complaint and acquitted the respondent/accused. Aggrieved by the same, the petitioner has filed the present petition seeking grant of special leave to prefer appeal against the judgment dated 17.08.2022 made in S.T.C.No.11 of 2018.

3. Learned counsel for the petitioner submitted that, admittedly, the accused persons were jointly maintaining an account and the cheque was issued by the accused persons, which stood dishonoured and the respondent has not disputed the signature of his deceased father/1st accused in the cheque, which clearly shows that there is a legally enforceable debt, which has not been discharged by the accused persons. It is the further submission of the learned counsel that, in order to disprove the case of the petitioner no witnesses were examined and no documents were marked on the respondent side. However, all those facts have not been properly considered by the court



CrI.O.P.No.26911 of 2022

below while passing the impugned order acquitting the respondent and the petitioner's complaint came to be dismissed merely on the ground of non-impleading the institution as a party to the complaint, in whose name, the account stands, which is not an incurable defect and the same is a curable one and therefore, interference is warranted with the findings recorded by the court below.

4. Though notice was ordered by this Court on 04.11.2022, till date, the petitioner has not taken any effective steps to serve notice on the respondent and no proof of service has been filed by the petitioner. Considering the period of pendency of this petition, this Court is inclined to dispose of the same based on the materials available on record.

5. This Court heard the learned counsel for the petitioner and perused the materials available on record.

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



CrI.O.P.No.26911 of 2022

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. It is the case of dishonour of cheque given by the accused to the complainant towards discharge of legally enforceable debt due and payable by the accused for which the complaint was filed under Section 138 of Negotiable Instruments Act which was dismissed.

8. It is not in dispute that the dishonoured cheque belongs to the accused as they have not disputed the signature in the cheque. A perusal of the impugned order reveals that, the complaint filed by the petitioner came to be dismissed solely on the ground that, the cheque in question belongs to M/s. Thirumathi Jesi Educational Society and the accused persons are the signatory of the said cheque. However, the petitioner has not added the above said institution as a party and thereby, the said complaint came to be dismissed.



CrI.O.P.No.26911 of 2022

9. Admittedly, the disputed cheque stands in the name of M/s.

Thirumathi Jesi Educational Society and the said institution, which is a necessary party, which has not been added as a party to the complaint. Therefore, necessarily, the petition is not maintainable for non-joinder of necessary party.

10. The above said issue fell for consideration before the Hon'ble Apex Court in the case of *Aneeta Hada Vs. M/s.Godfather Travels and Tours* wherein the Apex Court had held that the company should necessarily be added as a party to the case.

11. In view of the above ratio laid down by the Apex Court, the trial court had rightly dismissed the complaint filed by the petitioner, in which this Court does not find any fault with and thereby, this Court is not inclined to interfere with the same.

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



Crl.O.P.No.26911 of 2022

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.

13. 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.

25.04.2024

skt

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

To

The Judicial Magistrate No.1,
Perambalur.

7/8



WEB COPY



Crl.O.P.No.26911 of 2022

M.DHANDAPANI, J.

skt

Crl.O.P.No.26911 of 2022
in
Crl.A.Sr.No.49430 of 2022

25.04.2024