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CrI.O.P.No.10970 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.06.2024

CORAM:

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

CrI.O.P.No.10970 of 2024

in

CrI.A.SR.No.17001 of 2024

S.Papathi

...Petitioner

Vs.

P.Arul Murugan

...Respondent

Prayer in CrI.O.P.No.10970 of 2024: Criminal Original Petition filed under Section 378(4) Cr.P.C. to grant leave to the petitioner to file an appeal against the order of acquittal dated 28.02.2023 made in STC.No.07 of 2022 on the file of Judicial Magistrate, Fast Track Court-I, Erode.

Prayer in CrI.A.SR.No.17001 of 2024: Criminal Appeal filed under Section 378 Cr.P.C. to set aside the judgment of acquittal dated 28.02.2023 made in STC.No.07 of 2022 on the file of Judicial Magistrate, Fast Track Court No.1, Erode.

For Petitioner : Mr.B.Mohan



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ORDER

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2. The case of the petitioner is that, the petitioner/complainant and the respondent/accused are family friends and are known to each other for the past 9 years and on such acquaintance, on 15.06.2021, the respondent borrowed a sum of Rs.5,00,000/- from the petitioner and he promised to repay the same within a period of three months and he also issued post dated cheques both dated 15.09.2021 bearing Nos.280261 and 280262 each for a sum of Rs.2,50,000/- and also executed a promisory note in favour of the complainant as a security. As the respondent failed repay the borrowed amount, the petitioner presented the above said cheques for discharge of the said liability, however, the same were returned with endorsement 'Non-CTS Cheque not allowed'. Thereby, the petitioner sent a legal notice to the respondent on 29.09.2021, despite receiving the same on 01.10.2021, the



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respondent neither repaid the borrowed amount nor sent a reply. 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 STC.No.07 of 2022.

2.1. 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.1 and Exs.P-1 to P-5 were marked. On the side of the respondent neither any oral evidence was adduced nor any 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 against the said order.

3. Learned counsel appearing for the petitioner submitted that 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. 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. Further, 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.

4. This Court gave its anxious consideration to the submission advanced by the learned counsel for the petitioner and perused the materials available on record.

5. 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.

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 courts below.

7. With the above in mind, a perusal of the materials on record reveals that the respondent had not denied his signature in the cheque and also had not denied that the cheque does not belong to him. However, the whole case of the respondent is that whether the cheque is issued for the purpose of discharging the liability in respect of a legally enforceable debt.



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8. It is not in dispute that the dishonoured cheque belongs to the accused as she has not disputed her signature in the cheque. The alleged date of borrowing is in the year 2021 and it is alleged that, in order to acknowledge the loan, a promissory note was executed by the respondent. Though it is alleged that after receiving the loan amount, a promissory note was executed by the accused assuring repayment of loan amount, the said document was not produced by the complainant either before the trial court or before this Court in order to substantiate his claim. If at all the promissory note has been executed, what prompted the complainant to receive the cheque, as he could very well have proceeded against the respondent in a civil court.

9. Further, even a bare perusal of the materials available on record reveal that the disputed cheques were returned with an endorsement “Non-CTS Cheque not allowed” and it is an admitted fact that the CTS System was introduced as early as in the year January 2019. When it is the claim of the petitioner that the alleged borrowal is of the year 2021, it creates doubt



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as to how Non-CTS cheque would have been issued by the respondent even for security purpose. Further, it is pertinent to note that, at the time of 251 questioning, the respondent had clearly deposed that he borrowed a sum of Rs.2 Lakhs from the petitioner's son namely Vijayakumar during January 2013, for which, the above said cheques and RC book were given by the respondent as a security and despite repaying the borrowed amount, the petitioner's son did not return the said cheques and after a period of about six years, the said cheques were misused by the petitioner by filing the present complaint.

10. When such a stand is taken by the respondent, no material has been produced by the petitioner to negative the said claim or to show the payment made to the accused in the year 2021 so as to claim that the cheque was issued which stood dishonoured and, therefore, there is a legally enforceable debt which subsists. Thus, the trial court, on appreciating the materials available on record, had rightly dismissed the petitioner's complaint as he failed to establish that there was a legally enforceable debt



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for which the dishonoured cheque was issued by the accused and therefore, the said finding of the trial court cannot be interfered with.

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 committed by the courts below.

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.



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WEB COPY 13. In the aforestated 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.

07.06.2024

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

To

The Judicial Magistrate, Fast Track Court No.1,
Erode.



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M.DHANDAPANI, J.

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