IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.04.2024

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Crl.O.P.No.26343 of 2022
in
Crl.A.SR.No.49181 of 2022

Sudha .. Petitioner

Vs.

M.Sridevi .. Respondent

Prayer in Crl.O.P.No.26343 of 2022: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure Code, to grant special leave to file above appeal filed against the judgment passed in C.C.No.17 of 2016 dated 10.08.2022 on the file of Fast Track Court No.I, Judicial Magistrate Court Coimbatore.

Prayer in Crl.A.SR.No.49181 of 2022: Criminal Appeal filed under Section 378 of the Code of Criminal Procedure Code, to set aside the order of acquittal dated 10.08.2022 passed in C.C.No.17 of 2016 Fast Track Court No.1, Judicial Magistrate, Coimbatore.

For Petitioner : M/s.K.Sudhakar
For respondent : Mr.J.Franklin

ORDER

This Criminal Original Petition has been filed seeking to grant leave to prefer Criminal Appeal before this Hon'ble Court as against the Judgment passed in C.C.No.17 of 2016 dated 10.08.2022 by the Fast Track Court No.I, Judicial Magistrate Court, Coimbatore.

2. It is the case of the petitioner that the petitioner/complainant and the respondent/accused are well known to each other for the past 4 years. During November 2014, the accused had borrowed a sum of Rs.9,00,000/- from the petitioner by way of loan for business and family purpose. In order to repay the said loan amount, the accused had issued a cheque bearing No.'630440' dated 02/06/2015 drawn on City Union Bank to the petitioner for a sum of Rs.9,00,000/-. When the same was presented, for collection in Karur Vysya Bank, Sivanandha Colony Branch, Coimbatore, it was returned for the reason "Accound Closed" vide memorandum dated 13.06.2015. Aggrieved by which, the petitioner caused a legal notice dated 18.06.2015 to the respondent which was received by her on 19.06.2015 calling upon to pay the cheque amount and the respondent while

acknowledging the receipt of the same, the accused had neither sent a reply nor taken any steps to repay the loan 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 C.C.No.17 of 2016. The trial court, appreciating the materials available on record, held that the petitioner has not established that there was a legally enforceable debt for which the cheque was issued, which was dishonoured and also failed to prove that the cheque was issued by the respondent for discharging a legally enforceable debt and, accordingly, acquitted the respondent, aggrieved by which, the petitioner has filed the present petition seeking grant of leave to prefer the above Criminal Appeal.

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 her signature in the cheque, which clearly shows that there is a legally enforceable debt, which has not been discharged by the respondent. Hence, the presumption under Section 118 & 139 of Negotiable Instruments Act is in favour of the complainant with respect to

the legally enforceable debt. It is the further submission of the learned counsel that there was a transaction only between the petitioner and the accused. However, all those facts have not been properly considered by the court below while passing the impugned order acquitting the respondent and, therefore, interference is warranted with the findings recorded by the court below.

4. Learned counsel for the respondent/accused had denied the alleged liability stating that the accused had a transaction only with the complainant's husband to the tune of Rs.3,00,000/- for which she gave three blank cheques were given to him as a security and one of the cheques had been misused by the petitioner/complainant. He further submitted that the respondent/accused had executed a power of attorney dated 20.03.2014 in favour of the complainant's husband attested by his wife which was marked as Ex.D-1 in turn, he had executed a sale agreement in favour of one Srinivasan for a sum of Rs.21,00,000/- and received a sum of Rs..18,00,000/- in advance even without the knowledge of the respondent/accused. The above facts have been elaborately considered by

the court below while passing an order of acquittal. Accordingly, he prays for dismissal of this petition.

5. This Court heard the learned counsel for the petitioner 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, 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. It is the case of dishonour of cheque which was alleged to have been issued by the accused towards discharge of legally enforceable debt which was dishonoured resulting in filling of complaint under Section 138 of Negotiable Instruments Act as against the accused which was dismissed by the trial court on the ground that the complainant had failed to prove the existence of alleged trasaction between the petitioner and the accused for which the disputed cheque was issued.

9. The petitioner herein had challenged the order of acquittal passed by the trial court in C.C.No.17 of 2016 on the ground that there was a transaction between the complainant and the accused during November 2014 for which the disputed cheque was issued by the accused which was

dishonoured however, the same was disputed by the accused stating that there was a transaction only between the accused and the complainant's husband for which, the accused had issued signed blank cheques as a security and subsequently, executed a registered power of attorney dated 20.03.2014 in favour of the complainant's husband who in turn had executed a sale agreement on 09.04.2014 in favour of one Srinivasan and received a sum of Rs.18,00,000/- and that the petitioner had misused one of the cheques given to her husband as a security.

10. On the above contentions advanced by the learned counsel appearing on either side, this Court had perused the entire papers available on record which reveals that dureing the course of cross examination, the petitioner examined herself as P.W.1 and deposed about the transaction between the petitioner and the accused wherein, the accused had borrowed a sum of Rs.9,00,000/- from the petitioner during November 2014 and had failed to discharge the same. Later, in the cross examination dated 22.11.2016, the complainant had admitted the transaction between her husband and the accused and further admitted the execution of sale

agreement in favour of one Srinivasan which shows that the petitioner/complainant had given contradictory statments with regard to the alleged transaction for which the disputed cheque was alleged to have been issued.

11. Though it is the claim of the petitioner/complainant that the alleged transaction between the complainant and the accused is in November 2014, however, on perusal of Ex.D-1 which is the certified copy of the Power of Attorney dated 20.03.2014 executed in favour of the complainant's husband, it is revealed that the said document has been executed even prior to the date of alleged transaction. Hence, the claim of the petitioner with regard to the alleged transaction is wholly unsustainable and this Court does not find any perversity rendered by the trial court and therefore, no interference is warranted with the same.

12. 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 wrranting this Court to grant leave to set right the wrong that has been committed by the court below.

13. 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.

14. 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.

23.04.2024

NHS
To
The Fast Track Court No.I,
Judicial Magistrate Court,
Coimbatore.

M.DHANDAPANI, J.

NHS

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