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Crl.O.P.No.10642 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2024

CORAM:

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

Crl.O.P.No.10642 of 2024
in Crl.A.SR.No.45371 of 2023

B.Krishnan

... Petitioner

Vs.

R.Chandran

... Respondent

Prayer: Criminal Original Petition filed under Section 378 (4) of Cr.P.C., to grant special leave to prefer appeal against acquittal before this Court against the judgment passed in S.T.C.No.284 of 2014 dated 0612.2017 on the file of the learned Judicial Magistrate of Kotagiri, Nilgris District, Chennai 3.

For Petitioner : Ms.S.Yogalakshmi

For Respondents : No appearance

ORDER

Assailing the order of acquittal before this Court against the judgment passed in S.T.C.No.284 of 2014 dated 0612.2017 on the file of the learned Judicial Magistrate of Kotagiri, Nilgris District, Chennai 3, the present petition has been filed by the petitioner seeking leave to file appeal.



2. It is the case of the petitioner that the respondent had borrowed a sum of Rs.5,00,000/- on 15.03.2014 and he issued a post dated cheques bearing No.919986. When the same was presented for collection on 25.03.2014 before the Banker, it was returned as funds insufficient. Therefore, the petitioner has issued the statutory notice and the same was received by the respondent on 02.12.2014, but no reply and no repayment was made by the respondent. Therefore, the petitioner was constrained to file the 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 was examined and Exs.P-1 to P-5 were marked. On the side of the respondent, no witness was examined and four 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.

4. Learned counsel appearing for the petitioner submitted that



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inadvertently, in the complaint as well as in the legal notice, the petitioner has mentioned the cheque bearing No.919986 instead of 919906, which was subsequently noticed by the petitioner and filed a petition before the trial Court for amending the cheque number in the complaint in CMP.No.716/2016 in STC.No.284 of 2014 and the same was dismissed. Challenging the said order of dismissal, the petitioner has filed a revision before this Court in Crl.RC.No.993/2016 and the same was dismissed on 03.08.2016 with liberty to file additional proof affidavit before the trial Court clarifying the typographical error occurred in the proof affidavit filed by the petition before the trial Court. Thereafter, the petitioner filed proof affidavit. Even then, the trial Court has arrived at a conclusion that there is a material contradiction in the complaint and the affidavit. However, without properly appreciating the above, the court below has acquitted the respondent, which deserves interference at the hands of this Court.

5. The learned counsel further submitted that it is an inadvertent error on the part of the petitioner had occurred in the complaint as well as in the affidavit, which is curable defect. However, the same has not allowed by the trial Court is highly unjustifiable.



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6. This Court gave its anxious consideration to the submission advanced by the learned counsel for the petitioner and perused the materials available on record. Though notice has been served on the respondent, there is no representation on his behalf.

7. 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.

8. 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.

9. With the above in mind, a perusal of the materials on record reveal that according to the petitioner, the respondent had borrowed a sum of Rs.5,00,000/- from him on 15.03.2014, for which, he issued a post dated cheque bearing No.919986 dated 25.03.2014. However, the petitioner has mentioned said cheque No.919986 in the legal notice, complaint and affidavit. However, the actual instrument which was presented at the time of chief examination is 919906. The petitioner has stated that he inadvertantly made this error. The trial Court has come to conclusion that the cause of action for the cheque is wrong and dismissed the case, which is perfectly in order. Hence, this Court understood that the petitioner has not approached the trial Court as well as this Court with clean hands. The court below has premised its finding not merely on technicalities, as has been put forth by the petitioner, but it is more on sound logic. The trial court has doubted the version projected by the petitioner. Further, the petitioner has not established that the cheque was given by the respondent for discharging legally enforceable debt.



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10. 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.

11. 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.

12. 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.

19.06.2024

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Index: Yes/No
Speaking/Non speaking order

To

The Judicial Magistrate of Kotagiri, Nilgris District, Chennai 3.



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M.DHANDAPANI . J,

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