



Crl.O.P.No.3796 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.04.2024

CORAM:

THE HON'BLE **MR.JUSTICE M.DHANDAPANI**

Crl.O.P.No.3796 of 2023
in
Crl.A.SR.No.54488 of 2022

R.Tamilarasan

...Petitioner

Vs.

C.K.Haridoss

...Respondent

Prayer in Crl.O.P.No.3796 of 2023: Criminal Original Petition filed under Section 378(4) of Code of Criminal Procedure to grant special leave to file appeal against the judgment dated 24.08.2022 passed by the learned Fast Track Court No.I, Judicial Magistrate, Coimbatore, in C.C.No.116 of 2016.

Prayer in Crl.A.SR.No.54488 of 2022: Criminal Appeal filed under Section 378 of Code of Criminal Procedure to set aside the judgment dated 24.08.2022 passed by the learned Fast Track Court No.I, Judicial Magistrate, Coimbatore, in C.C.No.116 of 2016.

For Petitioner : Mr.A.Sriram

For Respondent : Notice not ready

ORDER

This Criminal original petition has been filed seeking to grant special leave to the petitioner to prefer an appeal against the judgment passed by the Fast Track Court No.I, Judicial Magistrate, Coimbatore, in C.C.No.116 of 2016 dated 24.08.2022.



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2. The case of the petitioner is that, the petitioner/complainant and the respondent/accused are family friends and they have known each other for a long period of time and on such acquaintance, on 18.07.2013, the respondent borrowed a sum of Rs.5,00,000/- from the complainant for his daughter's marriage expenses and agreed to repay the same within a period of six months with interest at the rate of 18% per annum and he voluntarily executed a mortgage loan agreement in favour of the petitioner. Though the respondent paid the interest for the above said borrowed amount till July 2014, thereafter, he neither paid the principal amount nor the interest amount. Thereafter, on repeated demands made by the petitioner, the respondent issued a cheque dated 30.08.2015 bearing No.536271 for a sum of Rs.4,00,000/-, in discharge of the part of the above liability. When the said cheque was presented for collection, the same was returned with endorsement 'Funds Insufficient', vide return memo dated 23.09.2015. Thereby, the petitioner sent a legal notice dated 05.10.2015 and the respondent while acknowledging the receipt of the same by sending a reply dated 29.10.2015 with false and frivolous averments, had 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 CC.No.116 of 2016. However, the trial court, had mechanically dismissed



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the said complaint and acquitted the respondent. Aggrieved by the same, the petitioner has filed the present petition seeking grant of special leave to prefer appeal against the judgment dated 24.08.2022 made in C.C.No.116 of 2016 .

3. Learned counsel 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, the trial court taking note of Rs.2,00,000/- which was earlier deposited by the respondent in the petitioner's bank account which pertains to another transaction, held that the accused repaid the borrowed amount. 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. Though notice was ordered by this Court on 07.03.2023, 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.



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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.



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8. 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.

9. It is not in dispute that the dishonoured cheque belongs to the accused as he has not disputed his signature in the cheque. The alleged date of borrowing is in the year 2013 and in order to acknowledge the loan, the blank cheque, promissory note and blank stamp paper were given as a security for the above said transaction. Though it is alleged that after receiving the loan amount, a promissory note and mortgage loan agreement were executed by the accused assuring repayment of loan amount, the said documents were not produced by the complainant in order to substantiate the said claim. Further, though the loan alleged to have been taken is of the year 2013, the disputed cheque is only of the year 2015, that too after execution of a promissory note. If at all the promissory note and mortgage loan agreement have been executed, what prompted the complainant to receive the cheque, as he could very well have proceeded against the respondent in a civil court. Further there is no material to show the payment made to the accused so as to claim that the cheque was issued which stood dishonoured and, therefore, there is a legally enforceable debt which subsists. When it is the specific case



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of the respondent that he had paid of the amount borrowed along with interest, which is evidenced through materials, which has been accepted by the court below, without disproving the said fact, through proper materials, merely seeking the indulgence of this Court to grant leave to proceed file the appeal against the respondent, who is held to be not guilty, cannot be permitted, as it would be nothing but an act of harassing the respondent. Though the petitioner claim that the accused borrowed a sum of Rs.5 Lakhs, however, the cheque amount is only for a sum of Rs.4 Lakhs and the same raises a doubt. Thus, the trial court, on appreciating the materials available on record, had rightly dismissed the petitioner's complaint on the ground that the petitioner has failed to establish that there was a legally enforceable debt for which the dishonoured cheques were issued by the accused and therefore, the said finding of the trial court cannot be interfered with.

10. 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 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 court below.



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11. 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.

12. 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

skt

NCC : Yes/No
Internet : Yes/No
Speaking order : Yes/No

To

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



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M.DHANDAPANI, J.

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