



Crl.OP.No.24073 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.04.2024

CORAM:

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

Crl.OP.No.24073 of 2023
in
Crl.A.SR.No.52296 of 2023

Durairaj

...Petitioner / Appellant

Vs.

Pandian

...Respondent

Prayer in Crl.OP.No.24073 of 2023: Petition filed under Section 378(4) of Code of Criminal Procedure to grant leave for preferring the Criminal Appeal against the order of acquittal passed in S.T.C.No.17 of 2020 dated 12.09.2023 on the file of the Judicial Magistrate, Fast Track Court, Kallakurichi.

Prayer in Crl.A.SR.No.52296 of 2023: Appeal filed under Section 378(4) of Code of Criminal Procedure to set aside the order of acquittal passed in S.T.C.No.17 of 2020 dated 12.09.2023 on the file of the Judicial Magistrate, Fast Track Court at Kallakurichi by allowing the present Criminal Appeal and punish the accused in accordance with Section 138 of Negotiable Instruments Act.

For Petitioner : Mr.R.Jayaprakash



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ORDER

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Assailing the order of acquittal dated 12.9.2023 passed in STC No.17/2020 by the Judicial Magistrate, Fast Track Court, Kallakurichi, the present petition has been filed by the petitioner seeking leave to file appeal.

2. It is the case of the petitioner that the petitioner and the respondent are friends and for the purpose of personal household expenses, on 5.12.2019, the respondent obtained Rs.20 Lakhs from the petitioner and he issued a cheque on 9.12.2019 bearing cheque No.000307 for a sum of Rs.20 Lakhs to discharge the said liability. However, the said cheque, upon deposit on 21.12.2019, was returned by the bankers on 23.12.2019 on the ground of insufficient funds. Therefore, the petitioner caused a legal notice to the respondent on 2.1.2020, which was received by the respondent, but no reply was sent 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 and 2 were examined and Exs.P-1 to P-4 were marked. Neither any oral evidence nor any documents were marked by the respondent. On the side of the witness, Ex.W-1 was marked. On the basis of



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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 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.

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

6. 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.

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 courts below.

8. With the above in mind, a perusal of the materials on record reveals that the respondent had denied that the cheque was given towards the discharge of a legally enforceable debt. In fact, it is the case of the respondent that he is a trader in rice and towards security, the respondent had given the cheque to the petitioner, which has been misused.

9. 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 court below has held that the petitioner has not proved his financial capacity to give a



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loan of Rs.20 Lakhs at one stroke. Further, there is no material to show that a sum of Rs.20 Lakhs was available with the petitioner and that it was given to the respondent as a loan. There is no document to prove that there was a loan transaction between the petitioner and the respondent. In fact, it is the case of the petitioner that the amount was allegedly given as loan on 5.12.2019 and towards return, cheque dated 9.12.2019 was given by the respondent. This Court is at a loss to understand as to a transaction, which takes place for a period of three days, more especially when the petitioner claims the respondent to be his friend.

10. It is seen that there is no material evidencing the payment of Rs.20 Lakhs as loan to the respondent. Though the petitioner claims that he received an amount of Rs.19,75,000/- from various business entities, however, the same has not been proved by the petitioner. Therefore, in the absence of any material to establish the financial capacity of the petitioner and also establish that there is a legally enforceable debt, towards the discharge of which the cheque was issued, which had been returned unpaid, the court below was fully justified in rejecting the complaint filed by the petitioner.

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.



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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.

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.

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

To



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Magistrate, Fast Track Court, Kallakurichi.

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M.DHANDAPANI, J.



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