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Crl.O.P.Nos.26726 & 26728 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2024

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

Crl.O.P.Nos.26726 & 26728 of 2023

in

Crl.A.SR.Nos.52777 & 52778 of 2023

T.Nagarajan

... Petitioner in both petitions

Vs.

Palaniammal

... Respondent in both petitions

Prayer in Crl.O.P.Nos.26726 & 26728 of 2023 : Criminal Original Petitions filed u/s.378(3) of the Code of Criminal Procedure, seeking to grant special petition as for as the respondent herein to file appeal against the judgment of acquittal dated 10.08.2023 made in S.T.C.Nos.230 and 229 of 2018 on the file of the Judicial Magistrate, Fast Track Court No.II, Erode.

Prayer in Crl.A.SR.Nos.52777 & 52778 of 2023 : Criminal Appeals filed under Section 378 of the Code of Criminal Procedure Code, to admit these appeals on file and call for the records in S.T.C.Nos.230 and 229 of 2018 on the file of the learned Judicial Magistrate, Fast Track Court No.II, Erode and set aside the judgement dated 10.08.2023 passed in S.T.C.Nos.230 and 229 of 2018 and allow these appeals.

For Petitioner : Mr.C.S.Saravanan



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Crl.O.P.Nos.26726 & 26728 of 2023

(in both petitions)

COMMON ORDER

These Criminal Original Petitions have been filed seeking to grant special leave to the petitioner to file appeals against the impugned judgment passed by the learned Judicial Magistrate, Fast Track Court No.II, Erode in S.T.C.Nos.230 and 229 of 2018 dated 10.08.2023.

2. It is the case of the petitioner/complainant that he is doing bulk firewood business and the respondent/accused No.3 is one of the partners in the partnership firm, namely M/s.Sri Velavan Paper/A1. All the accused used to purchase the firewoods from the petitioner on credit basis. Accordingly, as per the various invoice bills, Rs.52,35,819/- and Rs.17,96,531/- respectively being balance due payable by all the accused to the petitioner as per the true and proper accounts maintained by the petitioner as on 31.03.2016. In order to discharge the said outstanding, A2 issued 15 cheques dated 10.01.2018 to the tune of Rs.45,00,000/- and Rs.15,00,000/- respectively. As per the instructions of the respondent and others, the petitioner presented the said cheque for collection and the said



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cheques were returned dishonoured with endorsements “Account Blocked”, “Exceeds Arrangement” and “Insufficient Funds” respectively.

Thereafter, on 08.02.2018, the petitioner sent legal notice to the respondent and other accused. In spite of the service of notice on 10.02.2018, the respondent has not come forward to repay the said amount but sent reply notice on 22.02.2018. Therefore, complaints were filed by the petitioner as against the respondent and other accused for an offence u/s 138 r/w Sections 141 and 142 of the Negotiable Instruments Act (in short 'the N.I. Act') before the trial court in S.T.C.Nos.230 and 229 of 2018. While so, after trial, the Court below had dismissed the said complaints filed by the petitioner by acquitting the respondent and convicting A1 and A2. Aggrieved over the same, the petitioner preferred the present petitions seeking to grant special leave to prefer appeals against the said judgment dated 10.08.2023 in S.T.C.Nos.230 and 229 of 2018.

3. The learned counsel appearing for the petitioner submitted that the respondent is A3 and she was carrying out the day-to-day affairs of the business of A1, which was established before the trial court. However, the trial court arrived at a conclusion that A2 is the authorized



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signatory of A1 and in order to clear the dues, A1 to A3 issued cheques in favour of the petitioner and dismissed the complaints filed by the petitioner by convicting A1 and A2, however acquitted the respondent herein/A3, which deserves interference at the hands of this Court.

4. This Court perused the entire materials placed on record and the impugned judgment passed by the Court below.

5. 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 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 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.



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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 trial court.

7. With the above in mind, a perusal of the entire records reveals that the petitioner is doing firewood business and on behalf of A1 company, other accused persons/A2 to A5 purchased firewoods from the petitioner and as per the accounts maintained by the petitioner, there was due to the tune of Rs.52,35,819/- and Rs.17,96,531/- respectively, for which, on behalf of A1, A2 issued 15 cheques for a sum of Rs.45,00,000/- and Rs.15,00,000/- respectively and the said cheques were dishonoured when they were presented for collection by the petitioner. Immediately, after the filing of complaints by the petitioner, the respondent, A4 and A5 have filed a quash petitions before this court in Crl.O.P.Nos.14577 and 14578 of 2018 and this court allowed the quash petition in respect of A4 and A5, however, dismissed the quash petition in



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respect of respondent/A3 vide order dated 13.08.2018. However, the question arises for consideration in this matter is whether A3 have business affairs with A1 company and active participation or not. In this regard, it is seen that A2 is the authorized signatory of A1 company, who signed the instruments and given the same to the petitioner and the respondent/A3 has no active participation in the affairs of A1 company. By elaborately considering the above facts, the trial court dismissed the complaint filed by the petitioners by acquitting the respondent/A3, which cannot be said to be illegal or perverse. Therefore, this court is not inclined to interfere with the same.

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

9. No infirmities or other materials are placed which necessitates



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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.

10. In the aforesaid circumstances, no case is made out by the petitioner for grant of leave and accordingly, these Criminal Original Petitions stand dismissed. Consequently, the Criminal Appeals are rejected at the SR stage itself.

14.06.2024

Index : Yes / No
Speaking order / Non-speaking order
NCC : Yes / No
sp

To

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



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M.DHANDAPANI, J.

sp

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