



WEB COPY



Crl.O.P.No.112 of 2024

Crl.O.P.No.112 of 2024
in Crl.A.SR.No.53026 of 2023

A.D.JAGADISH CHANDIRA, J.

The Criminal Original Petition has been filed seeking to grant leave to file a Criminal Appeal against the Judgment of acquittal in Special C.C.No.06 of 2011 dated 30.3.2021 on the file of the learned Special Judge/Chief Judicial Magistrate, Dharmapuri.

2. Learned Government Advocate (Criminal Side) appearing for the petitioner submitted that even as per the prosecution, there were two demands prior to the trap i.e., on 24.12.2008 and 29.12.2008, however, the trial Court had believed the evidence of PW2/ *de facto* complainant with regard to the demand on 29.12.2008 in convicting the first accused, whereas, strangely, the trial Court had taken a perverse view in not believing the evidence of PW2 with regard to the claim by the respondent/the second accused on 24.12.2008 and 29.12.2008. Further, the presence of the respondent/A2 inside the office premises has been spoken by PW2, PW5 and the Trap Laying Officer. He further submitted that the



registration was made on 11.12.2008 and the amount was demanded for releasing the document and there are specific evidence of PW2 with regard to the demand made by the respondent/second accused on 24.12.2008 and 29.12.2008.

3. He further submitted that it is trite law that at the stage of granting leave, the Court could not enter into minute details of the prosecution evidence and refuse leave observing that the judgment of acquittal recorded by the trial Court could not be said to be perverse. He further submitted that there are also other materials available on record in respect of his contention. Further, he relied on the judgment of the Hon'ble Apex Court in ***State of Maharashtra vs. Sujay Mangesh Poyarekar*** reported in ***(2008) 9 SCC 475*** and the above judgment has also been followed by the Hon'ble Supreme Court in ***State of Maharashtra vs. Shankar Ganapathi Tahatol and others*** reported in ***(2020) 1 SCC 608***.

4. Mr.Prabakaran, the learned counsel for the respondent/accused submitted that though the respondent was charged for the offences under Sections 12 and 13(2) of the Prevention of Corruption Act, 1988 r/w 109 IPC for having abetted the main accused, the trial Court, after carefully considering the



entire evidence, finding that PW2 has not spoken about the demand made by the respondent/A2 on 30.12.2008, had acquitted the respondent/A2. Thereby, there is no perversity in the judgment of the trial Court.

5. Heard the learned counsel on both sides and perused the materials available on record including the depositions of PW2, PW5 and PW13 (Trap Laying Officer)

6. It is useful to refer to the paragraphs 19, 20 and 21 in the judgment of the Hon'ble Apex Court in ***State of Maharashtra vs. Sujay Mangesh Poyarekar*** reported in ***(2008) 9 SCC 475***.

“19. Now, Section 378 of the Code provides for filing of appeal by the State in case of acquittal. Sub-section (3) declares that no appeal “shall be entertained except with the leave of the High Court”. It is, therefore, necessary for the State where it is aggrieved by an order of acquittal recorded by a Court of Session to file an application for leave to appeal as required by sub-section (3) of Section 378 of the Code. It is also true that an appeal can be registered and heard on merits by the High Court only after the High Court grants leave by allowing the application filed under



WEB COPY

sub-section (3) of Section 378 of the Code.

20. In our opinion, however, in deciding the question whether requisite leave should or should not be granted, the High Court must apply its mind, consider whether a prima facie case has been made out or arguable points have been raised and not whether the order of acquittal would or would not be set aside.

21. It cannot be laid down as an abstract proposition of law of universal application that each and every petition seeking leave to prefer an appeal against an order of acquittal recorded by a trial court must be allowed by the appellate court and every appeal must be admitted and decided on merits. But it also cannot be overlooked that at that stage, the court would not enter into minute details of the prosecution evidence and refuse leave observing that the judgment of acquittal recorded by the trial court could not be said to be “perverse” and, hence, no leave should be granted.”

7. In view of the above submissions and the reasons adduced in the affidavit filed in support of this petition being satisfactory, this Court is of the opinion that a *prima facie* case is made out for grant of leave. Thereby, Leave granted.



WEB COPY



CrI.O.P.No.112 of 2024

8. Accordingly, the Criminal Original Petition stands ordered.

Registry is directed to number the Criminal Appeal, if it is, otherwise, in order.

14.02.2024

ham



WEB COPY



Crl.O.P.No.112 of 2024

A.D.JAGADISH CHANDIRA, J.

ham

**Crl.O.P.No.112 of 2024
in Crl.A.SR.No.53026 of 2023**

14.02.2024