



Crl.O.P.No.11019 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.06.2024

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

Crl.O.P.No.11019 of 2024

in

Crl.A.SR.No.57704 of 2022

V.Subramani

... Petitioner

Vs.

K.Kannan

... Respondent

Prayer in Crl.O.P.No.11019 of 2024 : Criminal Original Petition filed u/s.378(4) of the Code of Criminal Procedure, seeking to grant leave to file an Appeal against the judgment dated 14.07.2022 passed in C.C.No.428 of 2018 on the file of Fast Track Court No.1, Judicial Magistrate, Coimbatore.

Prayer in Crl.A.SR.No.57704 of 2022 : Criminal Appeal filed under Section 378 of the Code of Criminal Procedure Code, to set aside the Judgment of acquittal dated 14.07.2022 passed in C.C.No.428 of 2018 on the file of the learned Judicial Magistrate, Fast Track Court-I, Coimbatore and allow the above Criminal Appeal.

For Petitioner : Mr.R.Bharath Kumar



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ORDER

This Criminal Original Petition has been filed seeking to grant special leave to the petitioner to file an appeal against the impugned judgment passed by the learned Judicial Magistrate, Fast Track Court-I, Coimbatore in C.C.No.428 of 2018 dated 14.07.2022.

2. It is averred that the respondent/accused and the petitioner/complainant were known to each other and the respondent/accused has borrowed a sum of Rs.1,00,000/- for the purpose of family and business expenses on 01.09.2016 and on the same day, executed a demand promissory note with interest @ 24% p.a. When the petitioner insisted for the repayment, the respondent in order to discharge the part liability, he issued a cheque bearing No.00006 dated 24.01.2018 drawn on Lakshmi Vilas Bank for a sum of Rs.70,000/- in favour of the petitioner towards loan amount due by the respondent. As per the instructions of the respondent, the petitioner presented the said cheque for collection and the said cheque was returned dishonoured with an endorsement "Funds Insufficient" vide return memo dated 28.02.2018. Thereafter, the petitioner issued a statutory notice to the respondent on



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02.03.2018 and the same was delivered to the respondent on 05.03.2018.

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On receipt of the statutory notice, the respondent has issued a reply notice with false and frivolous allegations on 13.03.2018, however he has not come forward to repay the loan amount. Therefore, a complaint was filed by the petitioner as against the respondent for an offence u/s 138 of the Negotiable Instruments Act (in short 'the N.I. Act') before the trial court in C.C.No.428 of 2018. While so, after trial, the Court below had dismissed the said complaint filed by the petitioner by acquitting the respondent. Aggrieved over the same, the petitioner preferred the present petition seeking to grant special leave to prefer an appeal against the said judgment dated 14.07.2022 in C.C.No.428 of 2018.

3. The learned counsel appearing for the petitioner submitted that the trial court arrived at a conclusion in favour of the petitioner with regard to the legally enforceable debt and presumption in favour of the petitioner, however, later, the trial court arrived at a conclusion with regard to the correction made by the counsel in the legal notice and the complaint and given the benefit of doubt in favour of the respondent and acquitted the respondent, which is wholly unsustainable. Ex.P.2/cheque



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was issued on 24.01.2018, whereas in the legal notice and the complaint, it is typed as 24.02.2018 and the same was corrected at the appropriate stage itself. Further, in the deposition, inadvertently P.W.1 had deposed that the cheque was issued on 23.02.2018 instead of 24.01.2018, which cannot be held in favour of the respondent. Accordingly, he prays for appropriate orders.

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



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materials reveal that the court below has not appreciated the materials in proper prospective.

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 claims that the respondent borrowed a sum of Rs.1,00,000/- on 01.09.2016, for which he issued a cheque on 24.01.2018 bearing No.00006 dated 24.01.2018 drawn on Lakshmi Vilas Bank to the tune of Rs.70,000/-. In the legal notice, the petitioner has mentioned the date of issuance of cheque as 24.02.2018, which was subsequently corrected as 24.01.2018, and in the complaint also, it is stated as 24.02.2018 and the same was corrected as 24.01.2018. Further, the petitioner/P.W.1 in his cross examination had deposed that the respondent had issued the cheque on 24.02.2018 and 23.02.2018 and the same was



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presented on 28.02.2018. The petitioner himself deposed two dates for issuance of cheque in the cross examination before the trial court, thereby the trial court had drawn adverse inference as against the petitioner and held in favour of the respondent.

8. One more curious question raised in the present case is that the respondent sent a reply notice to the petitioner, in which the respondent has stated that the petitioner is a money lender and he used to borrow money from the petitioner from the year 2015 onwards. In the year 2016, he borrowed a sum of Rs.30,000/-, from which the petitioner had taken Rs.8,000/- towards interest and paid only 22,000/- to the respondent and the said action is a clear violation of the Interest Act, 1978. It is further stated that for the said loan, the respondent had given unfilled blank signed 3 cheques and promissory note to the petitioner. When such a defence is taken by the respondent in his reply notice, though the promissory note was marked, however, it is duty cast upon the petitioner to examine the witness of the pronote or the person namely Rajamani who has prepared the pronote. However, the petitioner has not examined the witness. Considering all the above aspects, the trial court had rightly



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dismissed the complaint filed by the petitioner, which cannot be said to be illegal or perverse. Therefore, this court is not inclined to interfere with the same.

9. 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.

10. 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.



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M.DHANDAPANI, J.

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11. In the aforesaid 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.

11.06.2024

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

To

The Fast Track Court No.1, Judicial Magistrate, Coimbatore.

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in
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