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Crl.OP.No.24755 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.04.2024

CORAM:

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

Crl.OP.No.24755 of 2023
in
Crl.A.SR.No.53935 of 2023

Sivanantha

...Petitioner / Appellant

Vs.

1. Sivan Tex, a partnership firm rep by its,
Partner:N.Sivakumar,
No.39, Arachalure Main Road,
Ammapalayam, Chinnamalai,
Also at No.39 Kaatur Road, Chinnamalai.

2. N.Sivakumar
Partner:N.Sivan Tex,
No.39, Arachalure Main Road,
Ammapalayam, Chinnamalai,
Also at No.39 Kaatur Road, Chinnamalai.

3. Dhathinamurthy,
Partner:N.Sivan Tex,
No.39, Arachalure Main Road,
Ammapalayam, Chinnamalai,
Also at No.39 Kaatur Road, Chinnamalai.

...Respondents

Prayer in Crl.OP.No.24755 of 2023: Petition filed under Section 378(4) of Code of Criminal Procedure to grant leave to prefer the appeal before this Court against the order in S.T.C.No.1018 of 2016 dated 20/09/2023, on the file of Judicial Magistrate, Kangeyam.

Prayer in Crl.A.SR.No.53935 of 2023: Appeal filed under Section



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378(4) of Code of Criminal Procedure to set aside the order of acquittal dated 20.09.2023 passed in S.T.C.No.1018 of 2016, on the file of Judicial Magistrate, Kangeyam and convict the respondents 1 to 3.

For Petitioner : Mr.S.Silambuselvan

ORDER

Assailing the order of acquittal dated 20.09.2023 in S.T.C.No.1018 of 2016 passed by the Judicial Magistrate, Kangeyam, 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 respondents were known to each other for several years. The first respondent is a partnership firm and the respondents 2 and 3 are partners in the first respondent firm. The day to day affairs of the first respondent firm was managed by the respondents 2 and 3. It is alleged that on 05.05.2013, the first respondent obtained a sum of Rs.5,00,000/- from the petitioner as hand loan and he issued a post dated cheque on 27.07.2013 bearing cheque No.286771 for a sum of Rs.5 Lakhs to discharge the said liability. However, the said cheque, upon deposit on 13.08.2013, was returned by the bankers on 14.08.2013 on the ground of "Account Blocked". Therefore, the petitioner caused a legal notice to the respondents on 11.09.2013, which was received by the respondents, but no reply was sent by the respondents. Therefore, the petitioner was constrained



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to file the complaint.

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3. Upon issuance of summons, the respondents appeared and were served with the copies of the documents and as the respondents 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. 1 was examined and Exs.P-1 to P-5 were marked. On the side of respondents, D.W.s1 and 3 were examined and Exs.D-1 to D-11 were marked. On the basis of oral and documentary evidence, the court below found the respondents not guilty of the offence and, accordingly, acquitted the respondents, 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 respondents and the respondents 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 respondents. 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



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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.

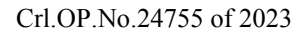
8. With the above in mind, a perusal of the materials on record reveal that the respondents have not disputed the cheque nor denied the signature of the second respondent. But the respondents have denied knowledge of the



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complainant. In fact, the respondents have denied that the cheque was given towards the discharge of a legally enforceable debt. It is the case of the respondents that they have not borrowed any money from the petitioner.

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. A perusal of the order of the court below reveals that no direct proof of payment of the amount lent to the respondents has been filed. Nor is there a written agreement evidencing the payment of the loan and there are also no receipts with regard to such payments nor is there any security taken from the respondents at the time of grant of loan. The trial court has further held that though the petitioner earned only a sum of Rs.14,000/- per month during the time at which he lent the alleged amount of Rs.5,00,000/- to the respondents, however, in the absence of any document filed by the complainant to show that there was sufficient facility and sufficient cash on the date on which he lent the money, it is valid that the complainant did not have sufficient facility to lend the check amount to the respondents. In fact, it is the case of the petitioner that the cheque was obtained from the respondents in blank in which the petitioner has filled up the amount. This clearly shows that there is neither admission of the amount filled up in the cheque nor the cheque is purported to have been issued by the respondents towards the discharge of a legally enforceable debt. In the absence of any material to prove the loan transaction between the petitioner and



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.



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

To
The learned Judicial Magistrate, Kangeyam

M.DHANDAPANI, J.

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