



Crl.O.P.No.10941 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2024

CORAM:

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

Crl.O.P.No.10941 of 2024
in Crl.A.SR.No.54592 of 2024

P.C.Rajesh Kumar

... Petitioner

Vs.

B.Omprakash

... Respondent

Prayer: Criminal Original Petition filed under Section 378 (4) of Cr.P.C., to grant leave and permit the petitioner to prosecute the above appeal filed against the order of acquittal dated 16.08.2023 made in C.C.No.567/2018 on the file of the Judicial Magistrate Court (FTC No.I), Coimbatore

For Petitioner : Mr.M.Guruprasad

ORDER

This petitioner has filed this Original Petition seeking leave to file an appeal as against the impugned judgement of acquittal dated 16.08.2023 made in CC.No.567/2018 passed by the learned Judicial Magistrate Court (FTC No.I) Coimbatore.

2. It is the case of the petitioner that the respondent has borrowed a sum of Rs.14,00,000/- on various dates and they entered into loan agreement on



31.01.2017. Upon demands from the petitioner, the respondent has paid a sum of Rs.5,00,000/- Again for the remaining amount of Rs.9,00,000/- the petitioner made repeated demands. Therefore, the accused issued a cheque bearing No.264491 dated 25.04.2018. As per instruction of the respondent, the petitioner deposited the cheque for encashment and the same was returned on 27.04.2018 with an endorsement "Drawer's signature differs". Therefore, the petitioner issued a legal notice to the respondent on 15.05.2018, which was received by the respondent and he has not replied and not paid the amount. Therefore, the petitioner was constrained to file the complaint before the learned Magistrate.

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, he examined himself as P.W.1 and Exs.P-1 to P-5 were marked. On the side of the respondent, no witness was examined and one document was marked. On the basis of 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.

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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 reveal that the respondent had denied that the cheque which was given towards the discharge of a legally enforceable debt. In fact, it is the case of the respondent that the petitioner's wife and daughter was running a chit, the respondent had given the cheque to the petitioner for collateral security, 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. On perusal of the impugned order, it is seen that the respondent has borrowed a sum of Rs.14 lakhs on various dates. On 31.01.2017, the petitioner issued a sum of Rs.10 lakhs by way of cash and on the same, he paid a sum of Rs.3 lakhs through NEFT and a sum of Rs.1 lakh was paid in the month February-2017. Subsequently, the petitioner claimed that the respondent repaid a sum of Rs.5 lakhs and issued a cheque for Rs.9 lakhs, which was marked as Ex.P2. Though the petitioner claimed that he has paid Rs.10 lakhs by way of cash and mostly in the denomination of Rs.2000/- and Rs.500/- notes. In the cross examination, he deposed that in the year 2016, he has paid Rs.10 lakhs from his provident fund account and he borrowed Rs.4 lakhs from his friend Samantha and paid to the respondent. Therefore, it is clearly seen that there was no cash transaction of Rs.10 lakhs to the respondent as alleged by the petitioner. Further, the petitioner has deposed that Rs.2000/- notes were given for a total sum of Rs.5 lakhs to Rs.6 lakhs and the same was denied by the respondent before the trial Court that on 08.11.2016 the Central Government has announced the demonetization and banned Rs.2000/- notes. The statement made by the petitioner is unbelievable that he has paid invalid notes to the respondent.



10. It is seen that the petitioner has not approached the trial Court with clean hands and 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. 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 aforesaid circumstances, no case is made out by the petitioner for grant of leave and, accordingly, this criminal original petition is dismissed.



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Consequently, the criminal appeal is rejected at the SR stage itself.

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Index:Yes/No

Speaking/Non speaking order

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To

The Judicial Magistrate Court (FTC No.I), Coimbatore.



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