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CRL.O.P.No.10636 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2024

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

CRL.O.P.No.10636 of 2024

in

CrI.A.Sr.No.54050 of 2023

R.P.Dhanasekar

.. Petitioner

Vs.

V.Padmavathi

... Respondent

Prayer in CRL.O.P.No.10636 of 2024: This Criminal Original Petition has been filed under Section 378(4) of Cr.P.C. to grant special leave to file the appeal against the order of acquittal dated 23.03.2023 made in S.T.C.No.507 of 2016 passed by the learned Fast Track JM-II of Erode.

Prayer in CrI.A.Sr.No.54050 of 2023: Appeal filed under Section 378(4) of Code of Criminal Procedure to set aside the order dated 23.03.2023 made in S.T.C.No.507 of 2016, on the file of the Fast Track Judicial Magistrate No.II of Erode.

For Petitioner : Mr.J.Vinoth

For Respondent : Mr.M.Guruprasad



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ORDER

Assailing the order of acquittal dated 23.03.2023 in S.T.C.No.507 of 2016 passed by the learned Fast Track Judicial Magistrate No.II, Erode, the present petition has been filed by the petitioner seeking leave to file appeal.

2. It is the case of the petitioner that the respondent obtained a sum of Rs.4,00,000/- from the petitioner as hand loan and she issued two post dated cheques on 23.10.2015 bearing cheque Nos.078842 and 078843 for a sum of Rs.2 Lakhs each to discharge her liability. However, the said cheques, upon deposit on 27.10.2015, was returned by the bankers on 28.10.2015 on the ground of “Account Closed”. Therefore, the petitioner caused a legal notice to the respondent on 03.11.2015, which was received by the respondent on 04.11.2015, but no reply was sent by the respondent. Therefore, the petitioner was constrained to file the complaint.



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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, P.W. 1 and P.W.2 were examined and Exs.P-1 to P-9 were marked. On the side of respondent, D.W.1 was examined and Ex.D-1 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.

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 cheques were 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. He further submitted that the admitted signatures and the disputed cheques were sent to the



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handwriting expert, and upon perusal of the same, the handwriting expert held that the admitted signatures and the signatures on the disputed cheques varies from each other. Though the expert opinion is not a conclusive proof, the trial Court has dismissed the petition filed by the complainant u/s.138 of the Negotiable Instruments Act based on the report submitted by the handwritting expert which is wholly unsustainable. Accordingly, he prayed to allow this petition.

5. The learned counsel for the respondent submits that there was dispute between the respondent and her husband, in order to take vengeance against the respondent, her husband has issued blank cheques in favour of the petitioner which was not signed by the respondent. All those facts were well appreciated by the trial Court and had concluded that there is no legally enforceable debt, which is perfectly in order and the same does not warrant any interference.

6. This Court gave its anxious consideration to the submission advanced by the learned counsel for the petitioner and the learned



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counsel for the respondent and perused the materials available on record.

7. 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.

8. 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.



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9. With the above in mind, a perusal of the materials on record reveal that the respondent has denied that the cheque was given towards the discharge of a legally enforceable debt and has also denied her signatures on the disputed cheques. It is the case of the respondent that she has not borrowed any money from the petitioner.

10. 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 respondent 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 respondent at the time of grant of loan. The trial court has further held that the admitted signatures of the respondent varies from the cheques which was alleged to have been issued by the respondent in favour of the petitioner. In fact, it is the case of the petitioner that the evidence of D.W.1 is not a conclusive proof to



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decide the issue. Though such a claim has been made by the petitioner, however, upon perusing the oral and documentary evidence has come to a conclusion that the admitted signatures of the respondent and the signatures on the disputed cheques varies from each other, which cannot be interfered with. In the absence of any material to prove the loan transaction between the petitioner and the respondent, the claim of the petitioner that there is a legally enforceable debt towards the discharge of which the cheque was given by the respondent is wholly unfathomable.

11. Therefore, in the absence of any material to establish the financial capacity of the petitioner and also establish that there is a legally enforceable debt, towards the discharge of which the cheque was issued, which had been returned unpaid, the court below was fully justified in rejecting the complaint filed by the petitioner.

12. 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



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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.

13. 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.

14. In the aforesaid 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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To

Fast Track JM-II of Erode



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