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Crl.O.P.No.408 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.04.2024

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Crl.O.P.No.408 of 2023

in

Crl.A.SR.No.61519 of 2022

P.Saravana Pandian

.. Petitioner/Appellant
/Complainant

Vs.

Tmt.Geetha

.. Respondent/Respondent
/ Sole Accused

Prayer in Crl.O.P.No.408 of 2023: Criminal Original Petition filed under Section 378(3) r/w Section 482 of the Code of Criminal Procedure Code, to grant special leave to prefer Criminal appeal before this Court to set aside the Judgment passed in STC.No.132/2021 on the file of the Fast Track Court Magistrate Level at Tiruvallur.

Prayer in Crl.A.SR.No.61519 of 2022: Criminal Appeal filed under Section 378 of the Code of Criminal Procedure Code, to set aside the Judgment passed in STC No.132/2021 on 20.10.2022 on the file of the Fast Track Court Magistrate Level at Tiruvallur.



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For Petitioner : M/s.T.Muruganantham
For respondent : Notice not in ready

ORDER

This Criminal Original Petition has been filed seeking to grant special leave to prefer Criminal Appeal before this Hon'ble Court to set aside the Judgment passed in STC.No.132/2021 on the file of the Fast Track Court Magistrate Level at Tiruvallur.

2. It is the case of the petitioner that the accused had borrowed a sum of Rs.6,00,000/- from the petitioner by way of loan through his Robinson Gabriel who is the mutual friend of both the petitioner and the accused, however, the accused has to pay a sum of Rs.6,00,000/- along with interest to the tune of Rs.90,000/-. Despite several requests made for repayment of the loan amount, the accused had failed to repay the same. However, on continuous demands made by the complainant, on 10.11.2018, the accused had executed a promissory note in favour of the complainant and thereafter, she failed to repay the principle and the interest amount. Thereafter, upon continuous requests made by the petitioner and his friend



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Robinson Gabriel for repayment of the amount, the accused had issued three cheques drawn on Canara Bank, Azhagiapandipuram bearing Nos.020553, 020554 and 020555 for a sum of Rs.2,90,000/-, Rs.2,00,000/- and Rs.2,00,000/- respectively with a request to present the cheques in March 2020 onwards. Acceding to the request made by the accused, the complainant presented the cheques issued by the petitioner on various dates in State Bank of India, Thiruninravur Branch however, the same was returned for the reason "Funds Insufficient" which was intimated to the complainant through bankers vide memorandum dated 23.02.2021. Since the respondent has deliberately failed to honour the cheque, the petitioner caused a legal notice dated 02.06.2020 to the accused calling upon him to pay the cheque amount and the respondent while acknowledging the receipt of the same, the accused had not taken any steps to repay the loan amount. Therefore, left with no other alternative, the complaint was filed by the petitioner for an offence u/s 138 of the Act before the trial court in S.T.C.No.132 of 2021 The trial court, appreciating the materials available on record, held that the petitioner has not established that there was a legally enforceable debt for which the cheque was issued, which was dishonoured



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and also failed to prove that the cheque was issued by the respondent for discharging a legally enforceable debt and, accordingly, acquitted the respondent, aggrieved by which, the petitioner has filed the present petition seeking grant of special leave to set aside the Judgment in S.T.C.No.132 of 2021.

3. Learned counsel appearing for the petitioner submitted that the cheque was issued by the respondent, which stood dishonoured and the respondent has not disputed his signature in the cheque, which clearly shows that there is a legally enforceable debt, which has not been discharged by the respondent. It is the further submission of the learned counsel that, in order to disprove the case of the petitioner no witnesses were examined nor any documents were marked on the respondent side. However, all those facts have not been properly considered by the court below while passing the impugned order acquitting the respondent and, therefore, interference is warranted with the findings recorded by the court below.

4. Though notice was ordered by this Court on 08.03.2023, the



respondent has not taken any effective steps to serve notice on the respondent. Considering the pendency of this petition, this Court is inclined to dispose of the same based on the materials available on record.

5. This Court heard the learned counsel for the petitioner and perused the materials available on record.

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



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 trial court.

8. It is the case of dishonour of cheques given by the accused to the complainant towards discharge of legally enforceable debt due and payable by the accused for which the complaint was filed under Section 138 of Negotiable Instruments Act which was dismissed on the ground of limitation.

9. It is not in dispute that the dishonoured cheques belongs to the accused as she has not disputed her signatures in the cheques. The alleged date of borrowing is in the year 2014 and in order to acknowledge the loan, the promissory note was executed on 10.11.2018. Though it is alleged that after receiving the loan amount, a promissory note was executed by the



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accused assuring repayment of loan amount, the said document was not produced by the complainant in order to substantiate the said claim. Even though, the alleged documents were available with the complainant, since the promissory note was alleged to be executed on 10.11.2018, the amount alleged to have been received by the accused has become time barred as the same was executed after a period of three years from the date of borrowal of the loan amount. Further, for the loan alleged to have been taken in the year 2014, cheques were alleged to have been given in the year 2020, that too after execution of a promissory note. If at all the promissory note has been executed, what prompted the complainant to receive the cheques, as he could very well have proceeded against the respondent in a civil court. Further there is no material to show the payment made to the accused so as to claim that the cheques were issued which stood dishonoured and, therefore, there is a legally enforceable debt which subsists. Thus, the trial court, on appreciating the materials available on record, had rightly dismissed the petitioner's complaint on the ground of limitation holding that the petitioner has failed to establish that there was a legally enforceable debt for which the dishonoured cheques were issued by the accused and therefore, the said



finding of the trial court cannot be interfered with.

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10. 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.

11. 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.

12. In the aforestated circumstances, no case is made out by the



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petitioner for grant of leave and accordingly, this Criminal Original Petition stands dismissed. Consequently, the Criminal Appeal is rejected at the SR stage itself.

23.04.2024

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To
The Judicial Magistrate, Paramthi Velur.



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M.DHANDAPANI, J.

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