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Crl.O.P.No.3102 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2024

CORAM:

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

Crl.O.P.No.3102 of 2024
in Crl.A.SR.No.60576 of 2023

S.Jawahar

... Petitioner

Vs.

Victoria

... Respondent

Prayer: Criminal Original Petition filed under Section 378 (4) of Cr.P.C., to set aside the judgment of acquittal dated 05.10.2023 passed in STC No.365 of 2021 on the file of the learned Judicial Magistrate, Udagamandalam, The Nilgris and consequently allow the appeal and convict the respondent.

For Petitioner : Mr.J.Bharathi Raja

ORDER

Assailing the order of acquittal dated 05.10.2023 passed in STC No.365 of 2021 on the file of the learned Judicial Magistrate, Udagamandalam, The Nilgris, 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 borrowed a sum of Rs.5,00,000/- on 03.03.2020 and executed a demand promissory note promising



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to repay the sum along with interest at the rate of 12%, for which, the respondent issued a cheque dated 28.12.2020 for a sum of Rs.5,00,000/- However, the said cheque has been deposited by the petitioner and the same was returned by the bankers with an endorsement "funds insufficient". Therefore, the petitioner caused a legal notice to the respondent on 12.01.2021, which was received by the respondent, but no reply and no repayment was made by the respondent. Therefore, the petitioner was constrained to file the complaint.

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.s 1 was examined and Exs.P-1 to P-4 were marked. On the side of the respondent, no witness was examined and four documents were 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 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. Though notice has been served on the respondent, there is no representation on his behalf.

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 borrowed a sum of Rs.5 lakhs on 03.03.2020 in which she executed a promissory note on the same day and agreed to repay the amount with 12% per annum. Subsequently, for discharging legally enforceable debt, the respondent executed a cheque/Ex.P1 dated 28.12.2020 for a sum of Rs.5 lakhs. When the said cheque was presented before the Bank for encashment, it was returned. In the complaint, the petitioner has not mentioned that he is doing money lending business from 2003 onwards. If it is so, the petitioner has to



maintain the loan account borrowed by the borrowers. In the present case, no document was before the trial Court. Apart from that, the petitioner has misused the cheque which was given for the purpose of security in a chit transaction. Further, the petitioner has filed more than 25 cases for 138 of NI in the entire district and the same has also not disclosed in the complaint. Hence, this Court understood that the petitioner has not approached the trial Court as well as this Court with clean hands. 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. Further, the petitioner has not established that the cheque was given by the respondent for discharging legally enforceable debt.

9. It is seen that there is no material evidencing the payment of Rs.5,00,000/- as loan to the respondent. 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.



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10. 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.

11. 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.

12. In the afore stated 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/Non speaking order



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The Judicial Magistrate, Udagamandalam, The Nilgiris



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