



Crl.O.P.No.28841 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2024

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

Crl.O.P.No.28841 of 2023
in
Crl.A.SR.No.61532 of 2023

B.Prakash

... Petitioner/Appellant

Vs.

1.M/s.G.K.Distributors,
Proprietor K.Dilip Kumar @ Dilip Marlecha
S/o.Kanmal,
Office Address:
No.35, Shanmugam Road,
West Tambaram,
Chennai – 600 045.

2.K.Dilip Kumar @ Dilip Marlecha ... Respondents/Respondents

Prayer in Crl.O.P.No.28841 of 2023 : Criminal Original Petition filed u/s.378(4) of the Code of Criminal Procedure, seeking to grant special leave to file this Appeal against the impugned order/judgment passed by the learned Metropolitan Magistrate, Fast Track Court-2, Egmore at Allikulam in S.T.C.No.1920 of 2021 dated 10.11.2023.

Prayer in Crl.A.SR.No.61532 of 2023 : Criminal Appeal filed under Section 378 of the Code of Criminal Procedure Code, to set aside the judgment of acquittal dated 10.11.2023 passed by the learned Metropolitan



CrI.O.P.No.28841 of 2023

Magistrate, Fast Track Court-2, Egmore at Allikulam, Chennai in
S.T.C.No.1920 of 2021.

For Petitioner : Mr.K.M.Balaji

ORDER

This Criminal Original Petition has been filed seeking to grant special leave to the petitioner to file an appeal against the impugned judgment passed by the learned Metropolitan Magistrate, Fast Track Court-2, Egmore at Allikulam, Chennai in S.T.C.No.1920 of 2021 dated 10.11.2023.

2. It is averred that the respondent/accused and the petitioner/complainant were known to each other through common friend one Rajesh for the past 6 years. In order to meet business commitments and for personal debts and also for urgent needs, for the development of busines, the respondent approached the petitioner in the month of April 2015 and requested the petitioner to arrange a sum of Rs.25,00,000/- as hand loan and further, the respondent promised to repay the above said loan amount within a period of one year and the respondent further accepted to give a debt deed for the same. As per his request, the petitioner arranged Rs.25,00,000/- by



CrI.O.P.No.28841 of 2023

way of his retirement benefits and pledging his jewels in private bank. After arranging the said amount, the petitioner requested the respondent to produce security to the above said loan amount and the respondent promised that he will produce a debt deed in favour of the petitioner. On 03.05.2015, after receiving the above said loan amount, the respondent and the petitioner entered into a debt agreement stating that the respondent agreed that the sum borrowed is a debt owned by the petitioner to the respondent and further the respondent accepted the interest at the rate of 1.75% p.m. and the accrued interest shall be added to the unpaid balance and also the accused shall make interest payment to the respondent on or before 5th of each month by way of cash or cheque and moreover the respondent accepted that the entire balance amount shall be paid in full not later than 1.5.2016 and it is further stated in the deed that the interest shall increase to 2% per month and a penalty of Rs.6,250/- shall be added to the balance due on the 3rd day of each month until the entire debt is not paid in full. From 3.5.2015 to 28.2.2021, the total amount with the principal is Rs.75,72,820/-, for which the respondent issued cheques bearing No.0001081 dated 01.03.2021 drawn on Karur Vysya Bank Limited, Tambaram Branch, Chennai – 600 045, for a sum of Rs.75,72,820/- in favour of the petitioner towards loan amount due



Crl.O.P.No.28841 of 2023

by the respondent. As per the instructions of the respondent, the petitioner presented the said cheque for collection and the said cheque was returned dishonoured with an endorsement "Account Closed" on 02.03.2021. Thereafter, the petitioner sent a legal notice to the respondent on 22.03.2021 both to his office and his residential address. Inspite the service of notice, the respondent has not come forward to repay the said amount but sent reply notice on 07.04.2024 making allegations against the respondent. Therefore, a complaint was filed by the petitioner as against the respondent for an offence u/s 138 and Section 141(1) of the Negotiable Instruments Act (in short 'the N.I. Act') before the trial court in S.T.C.No.1920 of 2021. While so, after trial, the Court below had dismissed the said complaint filed by the petitioner by acquitting the respondent. Aggrieved over the same, the petitioner preferred the present petition seeking to grant special leave to prefer an appeal against the said judgment dated 10.11.2023 in S.T.C.No.1920 of 2021.

3. The 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



Crl.O.P.No.28841 of 2023

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.

4. This Court perused the entire materials placed on record and the impugned judgment passed by the Court below.

5. 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.



WEB COPY

6. 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.

7. With the above in mind, a perusal of the entire records reveals that the petitioner has not averred anything with regard to the contents and details of the earlier legal notices dated 05.09.2020 and 15.09.2020 sent by the petitioner to the respondent in his complaint before the trial court. Further, though the respondent has claimed that the petitioner was his employee and the petitioner was subsequently terminated due to financial indiscipline and the said cheque was taken by the petitioner when he was employed with the respondent, which was subsequently misused by him, however the petitioner has not denied the fact that he was an employee of the respondent and he has also failed to prove that he has misused the said cheque. It is seen from the records that the petitioner has not proved his capacity to advance the said huge loan amount to the respondent by



Crl.O.P.No.28841 of 2023

producing documents before the trial court. Considering all the above aspects, the trial court had dismissed the complaint filed by the petitioner, which cannot be said to be illegal or perverse. Therefore, this court is not inclined to interfere with the same.

8. 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.

9. 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.



WEB COPY



Crl.O.P.No.28841 of 2023

M.DHANDAPANI, J.

sp

10. In the aforestated circumstances, no case is made out by the petitioner for grant of leave and accordingly, this Criminal Original Petition stands dismissed. Consequently, the Criminal Appeal is rejected at the SR stage itself.

25.04.2024

Index : Yes / No
Speaking order / Non-speaking order
NCC : Yes / No
sp

To

1.The Metropolitan Magistrate, Fast Track Court-2, Egmore at Allikulam.

Crl.O.P.No.28841 of 2023
in
Crl.A.SR.No.61532 of 2023