

**Crl.O.P.No.26191 of 2016 in
Crl.A.No.SR49988 of 2016**

M.VENUGOPAL,J.,

The Petitioner / Complainant has preferred the instant Criminal Original Petition before this Court seeking 'Leave to prefer an Appeal' as against the Order dated 28.09.2016 passed by the Learned Judicial Magistrate No.1, Krishnagiri in STC No.82 of 2013.

2. The Respondent / Accused was served Notice on 02.01.2017. In the said Court Notice it was mentioned that the Criminal Original Petition No.26191 of 2016 would come up for hearing before this Court on 10.01.2017. However, today, on behalf of the Respondent, there is no appearance on his behalf either In-Person or through Learned Counsel.

3. Since the notice was served on the Respondent / Accused on 02.01.2017, this Court holds the Service of Notice upon the Respondent as 'Sufficient One'.

4. According to the Petitioner / Appellant / Complainant's Learned Counsel, the trial court had dismissed the case in STC No.82 of 2013 on its file on 28.09.2016 because of the reason that the Petitioner / Appellant /

Complainant had not appeared and also that the Petitioner / Appellant / Complainant had not represented the matter for long time and apart from that, there was no representation at 5.00 p.m. when the Impugned Order came to be passed by the trial court.

5. The Learned Counsel for the Petitioner / Appellant brings to the notice of the Court that the cheque in question for Rs.2,00,000/- was given in the year 2012 and the Petitioner / Complainant was absent only for one hearing and for that hearing, the Respondent / Accused also remained absent and the trial court could not proceed further because of the reason it was not an effective hearing. Unfortunately, the trial court had passed an Impugned Order of dismissal in STC No.82 of 2013 dated 28.09.2016, which has resulted in serious miscarriage of justice.

6. The Learned Counsel takes a stand that although the case in STC No.82 of 2013 on the file of trial court was adjourned periodically for trial, the Respondent / Accused was purchasing time constantly under the guise of settlement and furthermore, when the presence of the Complainant was not necessary, then, the order of dismissal of the complaint in STC No.82 of 2013 dated 28.09.2016 passed by the trial court is an illegal one.

7. It is to be pointed out that if the Impugned Order of the trial court is against Law and if there is a manifest error of Law, then, a Court of Law can interfere with the said order to avoid miscarriage of justice. It is true that the High Court has got plentitude of power for hearing the 'Appeal against Acquittal' but if the trial court has misread the evidence available on record or not appreciated either the point of effect of point of Law, then this Court can interfere in the Appeal. Also that if an 'Order of Acquittal' is a perverse and capricious one, then also the High Court can intervene in the subject matter in issue.

8. In view of the fact that on behalf of the Petitioner/ Appellant / Complainant some tangible and arguable points have been raised, this Court in the interest of justice and fair play allows the Petition for grant of Special Leave.

Accordingly, this Petition is allowed.

10.01.2017

Index: Yes/ No
Internet: Yes/ No

ssd

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