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Crl.O.P.No.3700 of 2022

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in
Crl.A.SR.No.41635 of 2021

R.PONGIAPPAN, J.

This petition has been filed to grant leave to prefer the appeal as against the judgment of acquittal dated 17.03.2021 passed in STC.No.76 of 2017 by the learned Fast Track Court Judicial Magistrate, Nagapattinam.

2. Heard Mr.Murugan, the learned counsel appearing for the petitioner.

3. The case pertains to this petition was filed by the petitioner as against the respondent alleging that the respondent is committed the offence under Section 138 of NI Act. The learned Fast Track Court Judicial Magistrate, Nagapattinam by judgment dated 17.03.2021 came into conclusion that offence under Section 138 of NI Act is not made out as against the respondent and ultimately he dismissed the case filed by the petitioner in STC.No.76 of 2017.

4. Now on go through the judgment rendered by the trial court, the



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learned Judicial Magistrate observed that before filing the complaint, statutory notice under Section 138 of NI Act has not been sent to the respondent properly and also it was observed that the petitioner has not proved the fact that the alleged cheque has been issued for discharging the legally enforceable debt. In this regard, the learned counsel appearing for the appellant would contend after admitting the signature found in the cheque, it is for the drawer to prove statutory presumption raised under Section 139 of NI Act and therefore it cannot be said that the petitioner has not proved the fact that the cheque has not been issued for the legally enforceable debt. In this regard, on go through the judgment rendered by the trial court, paragraph 13 wherein it was stated by the trial court itself signature found in the cheque was admitted by the respondent as her own. Therefore after admitting the signature detailed appreciation is necessary to find out whether the cheque has been issued for legally enforceable debt or not. In otherwise, whether statutory notice was served or not is a material evidence, are also came out to be decided in a detailed manner. Therefore, the petitioner shown a valuable reason for granting leave.



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5. Accordingly, this criminal original petition is allowed.

28.02.2022

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Note: Registry is directed to number the appeal,
if it is otherwise in order.



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