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Crl.O.P.No.4825 of 2022

Crl.O.P.No.4825 of 2022 in
Crl.A.SR.No.5615 of 2022

R.PONGIAPPAN, J.

This petition has been filed praying to grant special leave to file an appeal against the judgment dated 21.09.2021 passed in CA.No.421 of 2017 on the file of the learned III Additional Sessions Judge, Coimbatore reversing the judgment and acquitting the accused, passed in CC.No.111 of 2011 dated 26.04.2017 passed by the learned Judicial Magistrate, FTC-1, Coimbatore.

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

3. It is the submission made by the petitioner counsel that the trial court by saying that the petitioner / complainant is not proved as on 17.12.2007, the accused came to Regional Office and executed Ex.P11. Further he has not produced the accounts in respect to prove the liability of the first respondent / accused. In this regard, it is further submission that after admitting issuance of cheque by the first respondent / accused itself, it



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is not necessary for the complainant to prove the liability of the first respondent / accused.

4. Here it is a case the signature found in the cheque is not disputed on the side of the first respondent / accused. Further it is not denied that the first respondent / accused is the subscriber in the chit conducted by the petitioner. Therefore, in view of Section 139 of NI Act, there is a presumption until contrary is proved, it should be presumed that cheque has been issued to discharge the legally enforceable debt. In this regard, the issuance of cheque and signature have not been denied by the first respondent / accused. Hence, the petitioner made out prima facie case for grant of leave.

5. Accordingly, this criminal original petition is allowed.

01.03.2022

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



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