



Crl.O.P.No.9713 of 2022

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in
Crl.A.SR.No.18087 of 2022

R.PONGIAPPAN, J.

This petition has been filed praying to grant leave to file an appeal against the order of acquittal dated 23.02.2022 passed in CC.No.276 of 2019 on the file of the learned Judicial Magistrate, FTC (Magisterial Level), Ambattur.

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

3. In the impugned judgment, in paragraph 13, it was stated as follows:

“13. Therefore from the above cited reference cases, it is settled principle that if the witness does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct and it would give rise to an adverse inference drawn against him. Accordingly in the present case the complainant herself not made available to cross examine by the other side, a presumption can be drawn under Explanation (g) to Section 114 of Indian Evidence Act



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against her. From the above discussion, the case of the complainant is not acceptable.”

Further, the said judgment was pronounced on 23.02.2022. On go through the daily status dated 01.02.2022, it was mentioned as “*Owing to omicron virus physical hearing of the case is suspended. Hence adjourned for settlement call on 05.03.2022*”.

4. On the other hand, after adjourning the case on 05.03.2022, the judgment was pronounced on 23.02.2022. Therefore, it should be necessary to see whether the opportunity was given to the complainant to place her case or not has to be decided only in the appeal.

5. Accordingly, leave is granted and this criminal original petition is allowed.

29.04.2022

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



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