



WEB COPY



Crl.O.P.No.691 of 2023 in Crl.A.Sr.No.58041 of 2022

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V.SIVAGNANAM,J.

This petition has been filed to grant leave to the petitioner/appellant to file an appeal against the judgment dated 04.11.2022 made in S.T.C.No.1111 of 2017 by the learned Judicial Magistrate-II, Salem.

2. The learned counsel for the petitioner submitted that, the petitioner/complainant filed a private complaint in S.T.C.No.1111 of 2017 before the learned Judicial Magistrate-II, Salem, against the respondent/accused under Section 138 of Negotiable Instruments Act for dishonour of cheque dated 14.05.2017 for Rs.7,00,000/- issued by him. He further submitted that, the Trial Court, vide judgment dated 04.11.2022, dismissed the complaint and acquitted the respondent/accused on the ground that the complainant not appeared before the Court. There is a ground for enquiring in detail hence, leave may be granted to file Criminal Appeal.

3. Heard the learned counsel for the petitioner and I have perused the



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materials on record.

4. On perusal of the records, the fact reveals that the petitioner/complainant filed a complaint against the respondent/accused under Section 138 of N.I.Act. On 04.11.2022, the Trial Court, without recording any evidence, dismissed the complaint and acquitted the accused under Section 256(1) of Cr.P.C., on the ground that the complainant not present before the Court. Therefore, *prima facie*, de hors to analyse as to whether the dismissal of the complaint for the absence of the complainant is justifiable, there is a *prima facie* factual case is made out. Hence, this court is inclined to grant leave to the petitioner.

5. Accordingly, this Criminal Original petition is allowed, granting leave to the petitioner to file the Criminal Appeal. Registry is directed to number the Criminal Appeal, if it is otherwise in order.

11.01.2023

rpl



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