



Crl.O.P.No.2065 of 2023

Crl.A.SR.589 of 2023

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V. SIVAGNANAM, J.

This petition is filed to grant special leave to appeal against the order of dismissal of complaint dated 30.11.2022 made in S.T.C.No.247 of 2017 on the file of the learned Judicial Magistrate, Fast Track Court, Tiruchengode.

2. The learned counsel for the petitioner submitted that the complainant filed a complaint against the respondent/accused for the offence punishable under section 138 of Negotiable Instruments Act. The learned trial judge dismissed the said complaint in STC.No.247 of 2017 stating that though the complainant appeared for the hearing on 15.09.2022, he did not appear thereafter for conducting the trial and inspite of giving final notice, calling for the appearance of the complainant on 01.11.2022, he stood absent for the hearing on 30.11.2022. Due to dismissal of the complaint under section 256 Cr.P.C, the accused was acquitted. He further submitted that the non appearance of the petitioner for the hearing before the trial court is neither wilful, nor wanton, but due to the serious health complications met out by the petitioner. Hence, he prefers to file an appeal against acquittal of the



accused, for which, he seeks special leave of this Court to file appeal.

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3. Heard the learned counsel for the petitioner and perused the materials placed on record.

4. Admittedly, the complainant/petitioner filed a complaint against the respondent/accused for the offence under section 138 of Negotiable Instruments Act. The complaint was filed on 21.06.2017 and the case was at the stage of taking evidence on complainant side. The petitioner appeared before the trial court on 15.09.2022, however, he did not appear before the trial court on 1.11.2022, inspite of service of notice of hearing. It is stated by the learned counsel for the petitioner that owing to his ill health, the petitioner is not able to appear before the trial court on that day. Therefore, the complaint was dismissed for non appearance of the complainant under section 256 Cr.P.C., which resulted in acquittal of the accused. This Court is of the view that the case was not decided purely on merits. Therefore, prima facie on facts, the case has to re-appraise and decide on merits. For the reasons stated above, permission is granted to petitioner to file appeal against acquittal. The petition is allowed.



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01.02.2023

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

V. SIVAGNANAM, J.

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