



Crl.O.P.No.1704 / 2023 in Crl.A.SR.3068/2023

Crl.O.P.No.1704 of 2023
in
Crl.A.SR.No.3068 of 2023

V. SIVAGNANAM, J.

This petition is filed to grant special leave to the appellant to file appeal against the respondent against the order of dismissal for default dated 01.11.2022 made in STC.N.843 of 2014 on the file of the Judicial Magistrate at Udthagamandalam.

2. The learned counsel for the petitioner submitted that the petitioner filed a complaint against the accused before the Judicial Magistrate, Udthagamandalam, The Nilgiris for the offence punishable under section 138 of Negotiable Instruments Act for dishonour of cheque for an amount of Rs.20,00,000/- issued by the accused towards the debts due by the accused to the petitioner. The learned Magistrate, after taking cognizance of the complaint, took the case on file as STC.No.843 of 2014. On 1.11.2022, for non appearance of the complainant, he dismissed the complaint for non appearance of the complainant under section 256



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Cr.P.C., thereby, he acquitted the accused. He further submitted though the petitioner has been diligently pursuing the matter and appeared before the lower court, at the time of hearing on 1.11.2022, since his father was unwell, he was unable to appear before the court on that date and unless special leave to appeal is granted, the right of the petitioner to prosecute the complaint would be defeated. Hence, he seeks leave of this court to file appeal against acquittal.

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

4. Perusal of records would reveal that the complaint filed by the petitioner was taken on file as STC.No.843 of 2014 and that on 01.11.2022, the complainant was called absent before the court below. Though the learned counsel for the petitioner/complainant appeared and submitted that the father of the complainant was unwell and hence he was unable to attend the court and produced medical records to that effect, the trial court dismissed the complaint for non appearance of the complainant



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and acquitted the accused under section 256 Cr.P.C. In such circumstances, the order passed by the court below needs re-appraisal of the reason stated by the trial court. Hence prima facie legal case is made out for granting permission to file appeal. Therefore, leave is granted.

27.01.2023

msr

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

V. SIVAGNANAM, J.

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