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Crl.OP No.3398 of 2023 in
Crl.A.SR 4408 of 2023

Crl.O.P.No.3398 of 2023 in

Crl.A.SR 4408 of 2023

V.SIVAGNANAM, J.

This petition has been filed to grant leave to file an appeal against the order of acquittal passed by the learned III Additional District and Sessions Judge, Coimbatore, in Crl.A.No.171 of 2020, vide order dated 31.10.2022.

2. The petitioner/complainant filed a complaint in C.C.No.91/2016 before the Judicial Magistrate, Fast Track Court Magisterial Level-II, Coimbatore under Section 138 of Negotiable Instruments Act, against the respondent seeking compensation towards the dishonoured cheque amount of Rs.1,00,000/- and to punish him. The Trial Court, vide judgment dated 28.08.2020, has convicted and sentenced the respondent for the offence punishable under Section 138 of Negotiable Instruments Act, to undergo 6 months simple imprisonment and to pay a compensation of Rs.1,00,000/- with interest at 6% p.a. from the date of cheque, within one month from the date of judgment, in default, to undergo 3 months simple imprisonment.

3. Challenging the judgment of conviction, the respondent herein, filed an appeal in Crl.A.No.171 of 2020, before the III Additional District and Sessions



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Judge, Coimbatore. The lower Appellate Court, vide judgment dated 31.10.2022, has acquitted the respondent/accused from the offence punishable under Section 138 of Negotiable Instruments Act, by setting aside the judgement passed by the Trial Court. Challenging the order of acquittal, the petitioner filed the instant petition seeking to grant leave to prefer the Criminal Appeal.

4. The learned counsel for the petitioner submitted that the the respondent/accused had specifically admitted in his evidence that, he did not suspect that his signature was forged in the cheque. However, without considering the above aspect, the lower appellate court has observed that the petitioner/complainant has not proved the signature of the respondent/accused in accordance with law and acquitted the respondent/accused. He further submitted that, without appreciating the evidence adduced by the petitioner in proper perspective, the lower appellate court has passed the impugned acquittal order and hence, leave may be granted to file Criminal Appeal.

5. Heard the learned counsel for the petitioner and I have perused the materials on record.



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6. It is seen from the records that, the Trial Court found the respondent guilty of the offence punishable under Section 138 of Negotiable Instruments Act and convicted and sentenced him as stated above. However, the lower Appellate Court, in its judgment at paragraph No.19 observed that the admitted signatures of the respondent/accused found in Ex.D1 to Ex.D4 are differed from the disputed signature found in Ex.P1. As such, the lower Appellate Court has taken a different view and acquitted the respondent from the charge under Section 138 of Negotiable Instruments Act. In such circumstances, this Court is of the view that, prima facie, there is a cause for re-appreciating the evidence both on facts and law and hence, inclined to grant leave to the petitioner.

7. 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.**

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