



WEB COPY



Crl.O.P.No.28291 of 2023

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in
Crl.A.SR.No.34890 of 2023

M. NIRMAL KUMAR, J.

This petition has been filed seeking to grant special leave to the petitioner to prefer the above criminal appeal.

2.The petitioner as complainant had filed a private complaint under Section 138 of the Negotiable Instruments Act against the respondent in C.C.No.386 of 2019. The Trial Court by judgment dated 13.04.2023 dismissed the complaint and acquitted the respondent, against which, the present leave and appeal.

3.The contention of the petitioner is that the Lower Court on 13.04.2023 dismissed the complaint for non prosecution under Section 256 of Cr.P.C. On that day, the petitioner as well as accused were absent and the petition under Section 317 Cr.P.C. was allowed by the learned Magistrate. In such circumstances, the absence of the petitioner/complainant would no way impair the progress of the trial. Further, the petitioner had been denied justice due to the short circuiting of dismissal of the complaint on technical ground.



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4.The learned counsel for respondent opposed this petition stating that on that day it was posted for cross examination of petitioner. The case is of the year 2019. The accused has been regularly appearing and the trial has been kept pending without any progress due to the non co-operation of the petitioner.

5.The learned counsel for petitioner refuted the same stating that the petitioner was injured, taken treatment as in-patient in K.G.Hospital, Coimbatore. In support of his contention, he has also produced the medical certificates.

6.It is seen that the complaint was dismissed on technical grounds and not on merits. In view of the same, this Court is inclined to grant leave. Accordingly, leave is granted.

20.12.2023

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

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