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Crl.O.P.No.22461 of 2023

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in
Crl.A.SR.No.35007 of 2023

M.NIRMAL KUMAR, J.

This petition has been filed seeking to grant special leave to file an appeal against the order in C.C.No.254 of 2017 dated 06.03.2023 passed by the learned Judicial Magistrate, FTC, Magistrate Level, Alandur.

2. The petitioner/complainant filed a complaint under Section 138 of the Negotiable Instrument Act against the respondent in C.C.No.254 of 2017. During the progress of trial, the respondent/accused approached the complainant and arrived at a settlement and agreed to pay a sum of Rs.5,00,000/- within a short period. Thereafter, when the case was called on 25.06.2019, a sum of Rs.20,000/- was paid in cash and the case was adjourned to 30.07.2019 and thereafter adjourned to 06.08.2019. On 06.08.2019, a sum of Rs.10,000/- was paid. In total, so far the accused paid only Rs.30,000/-. The petitioner thereafter found that the respondent is only dragging on the case in the name of settlement and not making any payment. The respondent also not appeared in the trial Court and NBW was issued, later it was recalled and the case was posted for cross



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examination of P.W.1/complainant on 06.07.2022, on which day, the complainant was present, the counsel for the accused not appeared and the case was adjourned periodically to various dates. On 06.03.2023, the complainant as well as his counsel were present in the morning. Later due to sudden illness of the complainant, he was unable to be present in the Court. When the case was called, counsel for the complainant filed a petition under Section 256 of Cr.P.C. to condone the absence of the complainant. The trial Court, considering the absence of complainant dismissed the Section 256 Cr.P.C. petition on 06.03.2023 and acquitted the accused. The trial Court failed to look into the fact that the accused is the person, who has been dragging on the case endlessly from the year 2017 even after compromise and settlement in the year 2019.

3. Finding reasons in the petitioner's submission, this Court is inclined to grant leave. Accordingly, leave is granted.

11.10.2023

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