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Crl.O.P.No.31540 of 2022 in
Crl.A.Sr.57340 of 2022

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V.SIVAGNANAM, J.

This Petition has been filed to grant leave to the petitioner to prefer an Appeal, against the judgment of acquittal passed by the learned Judicial Magistrate, Sholinghur in STC No.390/2020 dated 28.10.2022.

2. Notice served to the respondent and his name is printed in the cause list. However, none appeared on behalf of the respondent.

3. The petitioner herein is the complainant in STC No.390/2020 and he filed the above complaint against the respondent under Section 138 of Negotiable Instruments Act before the Trial Court. The case of the petitioner is that, he paid a sum of Rs.18,00,000/- to the respondent on 01.08.2020 and to repay the same, the respondent issued a cheque bearing No. 000584 dated 09.09.2020 for a sum of Rs.18,00,000/- drawn at Karur Vysya Bank Limited, Arumbakkam Branch, Chennai. Subsequently, the



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complainant presented the cheque for collection, but it was returned by his banker namely Karur Vysya Bank Limited, Sholinghur Branch, Ranipet on 14.09.2020, with an endorsement " Funds insufficient". Therefore, after issuing legal notice to the respondent on 25.09.2020, the complainant filed the above said complaint before the Trial Court to direct the respondent to pay the cheque amount.

4. The learned counsel for the petitioner submitted that, before the Trial Court, the petitioner examined himself as PW1 and marked 5 documents as Ex.P1 to Ex.P5 and the respondent/accused has not adduced any oral or documentary evidence. He further submitted that, in the reply (Ex.P5) given by the respondent to the notice sent by the petitioner, the respondent admitted the transaction between him and the petitioner, but disputed the date, on which, consideration was passed. Further, the respondent has not denied his signature found in the cheque and also admitted the issuance of cheque. In such circumstances, the Trial Court, without properly appreciated the evidence, has acquitted the respondent/

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accused, on the ground that the date of borrowal mentioned in the complaint and the legal notice are differed from each other. Further the Trial Court held that due to Corona Pandemic, the Government has declared the date i.e. 09.08.2020, Sunday, as fully lock down and hence, it could not be possible for the petitioner to lend the amount to the respondent on the above said date. The learned counsel submitted that due to typographical error, the borrowal date is wrongly mentioned in the legal notice sent by the petitioner and he has given evidence before the Trial Court, explaining properly as to how he lent money to the respondent. However, the Trial Court has failed to consider the same and passed the impugned judgment of acquittal. Hence, leave may be granted to the petitioner to prefer the Appeal.

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

5. A perusal of the records reveals that, the Trial Court, in its judgment dated 28.10.2022, observed that, the Government had issued a

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curfew order under Section 144 of I.P.C., declaring the date viz. 09.08.2020 (Sunday) as fully lock down. Further, the Trial court observed that the date of lending money mentioned in the complaint and the legal notice issued by the petitioner to the respondent, is differed from each other. According to the learned counsel for the petitioner, due to typographical error, the date of lending money was wrongly mentioned in the legal notice and further, the respondent himself admitted his signature found in the cheque and the issuance of cheque and hence, the judgment of acquittal passed by the Trial Court is liable to be set aside and the petitioner may be granted leave to prefer the Appeal.

6. In such circumstances, this Court is of the view that the evidence adduced by the parties requires re-appreciation by this Court and the petitioner made out a prima facie case. Hence, this Court is inclined to grant leave to the petitioner to file the Criminal Appeal.

7. Accordingly, this Criminal Original Petition is allowed. Registry is



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

23.01.2023

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