



WEB COPY



Crl.OP No.4115 of 2023 in
Crl.A.SR 59226 of 2022

Crl.O.P.No.4115 of 2023 in
Crl.A.SR 59226 of 2022

V.SIVAGNANAM, J.

This Petition has been filed to grant leave to the petitioner to prefer an Appeal, against the order of acquittal passed by the learned Judicial Magistrate No.1, Namakkal, in STC No.777 of 2021 dated 13.09.2022.

2. The petitioner herein filed a complainant in STC No.777 of 2021 against the respondent/accused under Section 138 of Negotiable Instruments Act seeking direction to the respondent to pay a sum of Rs.10,00,000/- towards the dishonored cheque amount and to punish him.

3. The Trial Court, vide order dated 13.09.2022, dismissed the complaint for non appearance of the complainant and acquitted the respondent/accused from the case under Section 256 Cr.P.C. Challenging the above order this petitioner is before this Court.

4. The learned counsel for the petitioner submitted that, the petitioner is a heart patient and on the date of hearing, he was unable to instruct his counsel to represent on his behalf. He further submitted that the petitioner has a prima facie case and the balance of convenience is in favour of him and hence, leave may be



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granted to the petitioner to prefer the Appeal.

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

6. A perusal of the records reveals that, the Trial Court, has dismissed the case only on the ground of non appearance of the petitioner/ complainant, not on merits. It is the contention of the petitioner that he is a heart patient and on the date of hearing, he was not able to appear before the Trial Court and also not able to instruct his counsel. Therefore, considering the facts and circumstances of the case, this Court is of the view that prima facie, the petitioner has made out a case and hence, is inclined to grant leave to the petitioner to file the Criminal Appeal.

7. Accordingly, this Criminal Original Petition is allowed.

23.02.2023

mst

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

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