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Crl.O.P.No.2942 of 2023 in Crl.A.SR.No.60774 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.O.P.No.2942 of 2023

in

Crl.A.SR.No.60774 of 2022

S.Sujatha,

... Appellant/Complainant

-vs-

R.Krishnan Prasad

... Accused/Respondent

PRAYER: Criminal Original Petition is filed under Section 378(4) of Cr.P.C.,
pleaded to grant special leave and permit the petitioner to prosecute the above
appeal filed against the order of acquittal dated 20.09.2022 made in C.C.No.441 of
2018, on the file of the Judicial Magistrate, Fast Track Court at Magisterial Level-
II, Coimbatore.

For Petitioner

: Mr.N.Somasundaar,



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ORDER

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This Criminal Original Petition has been filed to grant special leave and permit the petitioner to prosecute the above Criminal Appeal against the order of acquittal made in C.C.No.441 of 2018, dated 20.09.2022, on the file of Judicial Magistrate, Fast Track Court at Magisterial Level II, Coimbatore.

2. The Learned counsel for the petitioner submitted that the petitioner is the complainant. The respondent is an accused. The petitioner/complainant filed a complaint under Section 138 of N.I against the accused person for dishonour of cheque for a sum of Rs.5,50,000/- bearing No.379228, dated 15.12.2017. The trial Court acquitted the accused on the ground the complaint was not filed within the limitation period prescribed under the Act and the cause of action arose on 12th February 2018 but the complaint was filed on 13th March 2018. The one month period means for the month of February only 28 days, not 30 days. Therefore, it was not filed within limitation period. Hence, the trial Court acquitted the accused.



3. Further, the Learned Counsel for the petitioner contended that the

Hon'ble Supreme Court in the judgment of ***Econ Antri Ltd -vs- Rom Industries Ltd and another reported in 2013 AIR SCW 4977***, has held that, for the purpose of Section 142 (b) of N.I Act, which prescribed the complaint is to be filed within 30 days from the date on which the cause of action arises, the starting day on which the cause of action arises should be included for computing the period of 30 days. In view of the above decision of the judgment of the Hon'ble Supreme Court, the complaint is filed well within the period of limitation. The trial Court failed to consider the legal aspect. Hence, *prima facie* case has to be reappraised and seeking to grant leave.

4. Heard the Learned Counsel for the petitioner. Records Perused.

5. On perusal of the order of the trial Court, it reveals that the trial Court acquitted the accused only on the ground that the complaint was not filed within the limitation period and the cause of action had arisen for the term of one month. The trial Court had not taken into consideration of 30 days and had calculated the February month as a full month and not taken as 30 days. In view



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of the judgment of the Hon'ble Supreme Court in *Econ Antri Ltd (cited supra)*, it

has to be reappraised. Therefore, *prima facie* case is made out for reconsideration.

Hence, leave is granted to file an appeal against the order of acquittal.

Accordingly, the ***Criminal Original Petition is allowed.***

08.02.2023

Index: Yes/No.

bsm

To,

1. The Judicial Magistrate, Fast Track Court at Magisterial Level-II, Coimbatore.



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V.SIVAGNANAM, J.,

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