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Crl.OP No.3042 of 2023 in Crl.A.SR 62308 of 2022

Crl.O.P.No.3042 of 2023 in

Crl.A.SR 62308 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 Metropolitan Magistrate, Fast Track Court No.I, Egmore @ Allikulam, Chennai-3 in C.C.No.7538 of 2017.

2. The petitioner herein filed a complaint in CC No.7538/2017 before the Trial Court against the respondent under Section 138 of Negotiable Instruments Act. The case of the petitioner is that the respondent borrowed a total sum of Rs.10,00,000/- on different dates from June 2016 to September 2016 and to repay the same, he issued a cheque bearing No.429314 dated 08.05.2017 drawn on State Bank of India, Sathyamangalam Branch, Erode. The petitioner presented the above cheque for collection, but it was returned as " payment stopped by Drawer" by his banker, namely, The City Union Bank Limited, Annanagar West Branch, Chennai on 12.05.2017. Hence, after issuing legal notice, the petitioner

1 of 4



Crl.OP No.3042 of 2023 in Crl.A.SR 62308 of 2022

filed the above said complaint.

3. The Trial Court, vide order dated 07.08.2022, dismissed the complaint for non prosecution under Section 256 Cr.P.C. and acquitted the respondent/ accused from the case. Challenging the above order this petitioner is before this Court.

4. The learned counsel for the petitioner submitted that, the petitioner is the aged lady and was ailing from spondylities, on the date of hearing and hence, she was unable to instruct her counsel to represent on her behalf. However, the Trial Court, without considering the case on merits, has dismissed the complaint for non prosecution. Hence, leave may be granted to the petitioner to prefer the Appeal.

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



Crl.OP No.3042 of 2023 in Crl.A.SR 62308 of 2022

WEB COPY

6. A perusal of the records reveals that, the Trial Court, has dismissed the case only on the ground of non prosecution, not on merits. It is the contention of the petitioner that she is an aged woman suffering from ailments and hence, she was not able to appear before the Trial Court on the date of hearing or to instruct her 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. Registry is directed to number the Criminal Appeal, if it is otherwise in order.

09.02.2023

mst

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

3 of 4



WEB COPY



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