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Crl.O.P.No.2194 of 2024
in Crl.A.SR.No.5266 of 2024

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M. NIRMAL KUMAR, J.

This petition has been filed to grant special leave to the petitioner to file an appeal against the acquittal of the respondents.

2.The petitioner as complainant had filed a private complaint under Section 138 of the Negotiable Instruments Act against the respondents. The sworn statement was taken on 02.06.2022 and thereafter service of summons ordered. On 30.08.2022, accused had appeared. Thereafter the complainant filed proof affidavit on 26.10.2022, documents marked, evidence recorded and the complainant was ready for cross examination. But the respondents/accused failed to cross examine the witnesses, complainant side evidence closed and the case was posted for questioning under Section 313 of Cr.P.C. on 15.12.2022. On that day, the



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petitioner was present. The learned counsel for the accused filed petition under Section 145(2) Cr.P.C. seeking opportunity to recall and cross examination of PW1 and the case was adjourned to 25.01.2023. On that day also the petitioner was present. Thereafter, on 05.06.2023 and 07.08.2023, the petitioner was not present and on 22.09.2023, the Presiding Officer was on leave. The case was reposted on 12.12.2023. The Lower court finding that the petitioner's reason of unwell and bed ridden is not substantiated with materials and also the petitioner being absent on 05.06.2023 and 07.08.2023 dismissed the complaint under Section 256 Cr.P.C. and consequentially acquitted the respondents, against which the present appeal.

3.It is seen that the petitioner was present and ready for cross examination from 26.10.2022 to 13.03.2023. On those days it was the respondents/accused failed to cross examine the petitioner. Thereafter on two hearings the petitioner was not well and on 22.09.2023 the Presiding



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Officer was not present and finally on 12.12.2023 the complaint was dismissed, which is not proper. The real justice would be rendered only on the full fledged trial.

4.In view of the same, this Court is inclined to grant leave.

Accordingly, leave is granted.

07.02.2024

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