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Crl.O.P.No.405 of 2023 in Crl.A.Sr.No.8 of 2023

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V.SIVAGNANAM,J.

This petition has been filed to grant leave to the petitioner/appellant to file an appeal against the order of acquittal passed by the learned Judicial Magistrate, Fast Track, Magisterial Level, Poonamallee in S.T.C.No.5 of 2019 dated 26.10.2022.

2. The learned counsel for the petitioner submitted that, the petitioner filed a private complaint in S.T.C.No.5 of 2019 before the Judicial Magistrate, Fast Track, Magisterial Level, Poonamallee against the respondent under Section 138 of Negotiable Instruments Act for non payment of Rs.3,60,000/-, towards the dishonoured cheque. The learned counsel for the petitioner further submitted that, without appreciating the evidence adduced by the petitioner in proper perspective, the trial Court has passed the impugned acquittal order dated 26.10.2022 and hence, leave may be granted to file Criminal Appeal.

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



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4. It is seen from the records that, the Trial Court has acquitted the respondent from the charge under Section 138 of Negotiable Instruments Act. The trial Court in paragraph 5 of its order recorded that the total balance amount of Rs.3,60,000/- to be paid by the accused. To discharge the said amount, the accused issued a cheque bearing No.872786 for a sum of Rs.3,60,000/- on 11.08.2018. The accused husband has repaid a sum of Rs.1,62,840 on 30.08.2018. The remaining cheque amount is unpaid, in this circumstance, disbelieving the transaction is unsustainable. Therefore, *prima facie*, there is a case for re-appreciating the evidence both on facts and law. The trial Court improperly applied and not considered the admission of repayment of part of the cheque amount by the accused person. As such, this court is inclined to grant leave to the petitioner.

5. Accordingly, this Criminal Original petition is allowed, granting leave to the petitioner to file the Criminal Appeal. Registry is directed to number the Criminal Appeal, if it is otherwise in order.

09.01.2023



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