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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.06.2017

CORAM

THE HON'BLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.(MD) No.6626 of 2017

and Crl.M.P.Nos.4319 and 4320 of 2017

R.Subramanian ... Petitioner/Accused
-vs-

Leo Francis ... Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for the records in C.C.No.45 of 2017 on the file of the learned Judicial Magistrate, No.II, Tiruchirappalli, Tiruchirappalli District and quash the proceedings as against the petitioner.

For Petitioner : Mr.A.Thiruvadikumar

O R D E R

Heard the learned counsel for the petitioner.

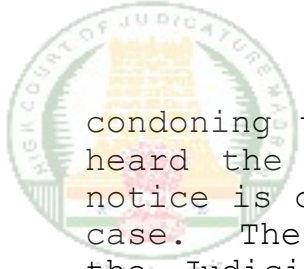
2.For the sake of convenience, the parties will be referred to as the complainant and accused.

3.The complainant filed a private complaint for an offence under Section 138 of the Negotiable Instruments Act before the Judicial Magistrate, No.II, Trichy against the accused on 28.11.2016 with a delay of 30 days. The delay petition was numbered as CMP No.7373/2016 on 28.11.2016 and the following order has been passed on 29.11.2016:

"Complainant side on perused of records this petition for condoning delay for 30 days only. Reason for delay is acceptable. Hence, this Court is inclined to allow this petition with condition. The petitioner/complainant shall pay cost of Rs.300/- to DLSA Trichy on or before 17.12.2016, failing which, this petition stands dismissed. Call on 17.12.2016."

Challenging which, the accused is before this Court.

4. This petition deserves to be allowed on the short score that the learned Judicial Magistrate has passed the impugned order, even without hearing the accused, as could be seen from the above. Fundamental principles of natural justice requires that before



condoning the delay, the learned Judicial Magistrate ought to have heard the accused. Therefore, if this petition is admitted and notice is ordered to the complainant, it will only further delay the case. Therefore, this petition is allowed and the order passed by the Judicial Magistrate is set aside. C.M.P.No.7373 of 2016 is hereby remanded back to the trial Court for fresh consideration on merits. No further notice need be sent to the accused by the Magistrate. The accused shall appear before the Magistrate within two weeks from the date of receipt of a copy of this order and furnish a bond under Section 88 Cr.P.C. for Rs.5,000/- without sureties. He shall also file a counter in C.M.P.No.7373/2016 within two weeks from the date of receipt of a copy of this order. Thereafter, the Magistrate shall consider the condone delay application afresh on merits.

5. In view of the above, this petition is allowed. Consequently connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To:

1.The Judicial Magistrate, No.II,
Tiruchirappalli,
Tiruchirappalli District

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/s. A.THIRUVADI KUMAR Advocate in SR. No.58701
RR
JS/SV.MMS/SAR.2/15.6.2017/2P-4C

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