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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.07.2019

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THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

Crl.RC.(MD)No.20 of 2019

M.Selvaraj : Revision Petitioner/ Petitioner

Vs.

Ramkumar : Respondent/Respondent

Prayer: Criminal Revision filed under Section 397 r/w 401 of the Code of Criminal Procedure against the order, dated 31.10.2018 made in Crl.M.P.No.3802 of 2018 passed by the Principal Sessions Judge, Trichy.

For Revision Petitioner : Mr.M.Dinesh Hari Sundarsan

For Respondent : Mr.G.Kandha Vadivelan

O R D E R

This Criminal Revision is directed against the order, dated 31.10.2018 made in Crl.M.P.No.3802 of 2018 passed by the Principal Sessions Judge, Trichy.

2.The respondent obtained a hand loan of Rs.4,61,900/- from the petitioner, for which he executed a promissory note in favour of the petitioner and since the petitioner requested the respondent to repay the said amount, the respondent issued three post-dated cheques on different dates for a total sum of Rs.46,19,000/-. When the petitioner presented the third cheque on 17.06.2017, it was dishonoured and returned uncollected as "funds insufficient and since the respondent evaded the repayment, a complaint has been filed before the Judicial Magistrate No.1,Trichy, which was numbered as C.C.No.261 of 2017. Due to the accident, the petitioner could not appear before the trial court. The trial court passed an order under Section 256 of Crl.P.C, thereby acquitting the respondent from the case. The petitioner preferred a revision against the said judgment on 21.03.2018, the learned Principal District and Sessions Judge, Trichy, along with the petition in CMP No.3803 of 2018 to condone the delay of 73 days in filing the said appeal. The learned Judge dismissed the said petition for default. Hence, the criminal revision.

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3.Heard both sides and perused the materials available on

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record.

4.The only grievance of the petitioner is that due to accident, the petitioner could not be able to attend the court and no reasonable opportunity was given to the petitioner to conduct the case.

5.Per contra, the learned counsel appearing for the respondent argued that the reasons stated by the petitioner to file a petition for condonation of delay is false and the court below rightly dismissed the petition for default and prays for dismissal of the petitioner.

6.It is seen from the records that due to the accident the petitioner could not appear before the trial court. The trial court without giving opportunity to the petitioner has acquitted the respondent from the said case.

7.It is also seen that against the order of the trial court, the petitioner preferred appeal before the Principal District Judge, Trichy, along with a petition to condone the delay of 73 days in filing the appeal. But the learned Judge dismissed the petition on the ground that the petitioner called absent and previous order not complied with.

8.In view of the above facts, in the interest of justice and in order to give an opportunity to the petitioner, it would be appropriate to allow this revision on payment of costs.

9.In the result, this criminal revision is allowed. The impugned order passed by the Principal Sessions Judge, Tiruchirappalli, dated 31.10.2018 is set aside. The petitioner is directed to deposit the cost of Rs.500/- already imposed by the trial court within a period of one week from the date of receipt of a copy of this order. On such compliance, the Principal District and Sessions Judge, Trichy is directed to take up the criminal appeal on file and dispose of the same on merits and in accordance with law, as expeditiously as possible.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

To,

1.The Judicial Magistrate No1,
Tiruchirappalli.

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2.The Principal Sessions Judge,
Tiruchirappalli.

+1 CC to M/s.M.DINESH HARI SUDARSAN, Advocate (SR-75771[F] dated 17/07/2019)

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