



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.02.2022

CORAM:

THE HONOURABLE Mr. JUSTICE G.K. ILANTHIRAIYAN

Crl.R.C(MD).No.917 of 2021

Akbarsha

... Revision Petitioner/
Complainant

Vs

A.Chinnaiya

... Respondent/Accused

PRAYER: Criminal Revision case filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records in Crl.M.P.No.324 of 2020 in unnumbered STC of 2020 dated 29.10.2021 pending on the file of Judicial Magistrate Court, Aruppukottai and set aside the same by allowing this revision petition.

For Petitioner : K.Thabhuraja

For Respondent : Mr.D.Senthil

O R D E R

This criminal revision case has been filed to set aside the order dated 29.10.2021 passed in Crl.M.P.No.324 of 2020 by the learned the Judicial Magistrate, Aruppukottai, thereby dismissing the petition filed to condone the delay of 45 days in filing the complaint under Section 138 of NI Act for the reason that the petitioner called absent.

2.The learned counsel appearing for the petitioner would submit that the petitioner filed a private complaint under Sections 138 and 142 of the Negotiable Instruments Act against the respondent before the learned Judicial Magistrate, Aruppukottai, with a petition to condone the delay of 45 days in filing the private complaint. He would further submit that since the petitioner was suffering from lung disease, he could not file a complaint in time. When the delay petition was taken up for hearing, the petitioner was absent and therefore, the petition was dismissed for default by order dated 29.10.2021, which is under challenge. He would further submit that the trial Court, without giving any opportunity and without issuing any notice to the petitioner, has straightaway dismissed the delay petition for default. Since the petitioner was taking treatment for his ailment, he could not attend the Court at the time of hearing the delay petition. Therefore, he prays to set aside the order of dismissal passed by the trial Court.

3.The learned counsel appearing for the respondent would vehemently contend that except the bald averments that the petitioner/complainant was suffering from lung disease and thereby



he could not file the complaint on time, the petitioner filed any documents to prove his contention. That apart, there is no satisfactory reason given by the petitioner for his non-appearance and he prays for dismissal of the revision.

4. This Court has carefully considered the rival submissions and perused the materials available on record.

5. In the considered opinion of this Court, the delay is on the minimal side and the reasons assigned by the petitioner is satisfactory and in order to give one more opportunity to the petitioner to put forth his case, this Criminal Original Petition is allowed, by setting aside the order of dismissal dated 29.10.2021. The Court below is directed to restore the condone delay petition on file and issue fresh notice to the petitioner and the respondent and pass on orders on merits and in accordance with law.

Sd/-

Deputy Registrar (LA & MC)

// True Copy //

/ /2022

Sub Assistant Registrar (CS)

cp

To

The Judicial Magistrate,
Aruppukottai.

Copy to:

The Record Keeper, Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.I.SALIYAKHAN, Advocate (SR-5613[F] dated 11/02/2022)

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MGJ(16.03.2022) 2P 5C