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Crl.O.P.No.5370 of 2024
in Crl.A.Sr.No.9826 of 2024

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M. NIRMAL KUMAR, J.

This petition has been filed to grant leave to the petitioner to file an appeal against the order dated 30.01.2024 in C.C.No.2485 of 2016 on the file of the learned Metropolitan Magistrate Fast Track Court II, Egmore at Allikulam, Chennai.

2.The petitioner as complainant had filed a private complaint under Section 138 of the Negotiable Instruments Act in C.C.No.2485 of 2016. The Trial Court by judgment dated 30.01.2024 dismissed the complaint for non prosecution for non appearance of the petitioner.

3. The learned counsel for the petitioner submitted that earlier the complaint was filed against three persons including the 3rd respondent. Since the 3rd respondent had left USA, notice could not be served to the 3rd respondent. For this reason, the case was pending. Hence the petitioner filed a petition in Crl.M.P.No.51075 of 2023 to withdraw the complaint against the 3rd respondent and the same was allowed on 08.11.2023. Thereafter, the



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case was posted on 04.12.2023. On that day, the Government has declared holiday due to “Michaung Cyclone”. Thereafter, the matter was posted on 26.12.2023 and due to Christmas vacation, the counsel had sought for an adjournment and the case was posted to 30.01.2024. On that day, neither the complainant nor his counsel appeared. Since the adjournment date was noted in the office diary of the counsel petitioner, he was informed about the dismissal immediately. The petitioner had approached the trial Court explained the reason for non appearance on 30.01.2024 and also the trial Court informed that already orders passed and thereafter, he made a copy application on 01.02.2024 and received the order on 06.02.2024.

4. The learned counsel for the petitioner further submitted that the order has been passed for non appearance and it is not on merits. Hence notice to respondent may not be necessary. Further, he submitted that notice on the respondent can be dispensed with and C.C.No.2485 of 2016 to be restored.



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WEB COPY 5. Finding reason and force in the petitioner's submission, this Court is inclined to grant leave. Accordingly, leave is granted.

14.03.2024

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