

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27-07-2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 192 of 2015

1.Vinay P.Patrick Charles Victor

2.IFR Victor

.. Petitioners/Accused 1 & 2

Versus

Sri Murugappa Textiles
Represented by its Partner
V.P.Loganathan
Having its Office at
No.5, S.P.Koil Street
Pudupet, Nagari
Chittoor District
Andhra Pradesh
Pin Code-517 590.

.. Respondent/Complainant

Criminal Revision Case filed under Section 397 read with 401 of Cr.P.C. against the order dated 05.02.2014 made in M.P. No. 2417 of 2013 on the file of the VII Metropolitan Magistrate, George Town, Chennai.

For Petitioners : Mr.S.Subramanian

For Respondent : No Appearance

ORDER

The petitioners/accused Nos.1 and 2 have come forward with this Criminal Revision Case challenging the order dated 05.02.2014 made in M.P. No. 2417 of 2013 on the file of the VII Metropolitan Magistrate, George Town, Chennai, by which, the application filed by the respondent/complainant to condone the delay of 222 days in filing the complaint under Section 138 of the Negotiable Instruments Act was allowed.

2. The case of the respondent/complainant is that the petitioners/accused Nos.1 and 2 have purchased material from the complainant and promised to pay the amount for material. Accordingly, the accused Nos.1 and 2 towards discharge of part liability had issued two cheques for Rs.3,49,278/- and Rs.5,20,000/-. When the complainant presented the said cheques for collection, the

cheques returned dishonoured for the reason 'Insufficient Funds'. The complainant sent a statutory notice on 18.08.2012. After receiving the notice also, the petitioners/accused Nos.1 and 2 have not come forward to pay the cheque amount. Under those circumstances, the respondent has filed the complaint before the trial Court. There was a delay of 222 days in filing the complaint and therefore, the respondent filed M.P. No. 2417 of 2013 to condone the delay of 222 days in filing the complaint. By the impugned order, the Court below allowed the application, against which, the present Criminal Revision Case is filed.

3. Mr.S.Subramanian, learned counsel for the petitioners/accused Nos.1 and 2 vehemently contended that the impugned order passed by the Court below is liable to be set aside inasmuch as the Court below has not assigned any reason at all for allowing the application for condonation of delay of 222 days in filing the complaint. In other words, the impugned order passed by the Court below is a cryptic order without disclosing any reasons for allowing the application for condonation of delay. In this context, the learned counsel for the petitioners relied on the decision of the Honourable Supreme Court reported in (Secretary and Curator, Victoria Memorial Hall vs. Howrah Ganatantrik Nagrik Samity and others) (2010) 3 SCC 732 to contend that a judicial order must be supported by reasons and in the absence of any reason for allowing the application, it can be construed that the impugned order was passed without application of mind and consequently it is liable to be set aside. Only a reasoned order would ensure that application of mind in the decision making process because, persons, who were adversely affected by an order must know the reasons based on which his claim or plea was rejected. In this case, the respondent has filed the application for condoning the delay of 222 days by simply stating that the complainant waited till date for repayment of the amount by the accused Nos.1 and 2, but, the accused Nos.1 and 2 have failed to repay the amount and hence, the delay has occurred and the delay is neither willful nor wanton case. Such a plea raised by the respondent for condonation of delay of 222 days ought not to have been accepted by the Court below.

4. Though, notice was served on the respondent, none appeared for the respondent and hence, a fresh notice was ordered to the respondent. Though, the said fresh notice was served on the respondent, again none appeared on behalf of the respondent and hence, the name of the respondent was directed to be printed in the cause list, in spite of the same, today when the matter is called, the respondent has neither chosen to appear in person nor represented through counsel. The Hon'ble Apex Court in the judgment reported in (2013) 3 Supreme Court Cases 721, K.S.Panduranga vs. State of Karnataka, has culled out certain principles and in paragraph No.19 has held as follows:-

"19. From the aforesaid decision in Bani Singh vs. State of Uttar Pradesh, reported in (1996) 4 SCC 720, the principles that can be culled out are:

19.1. That the High Court cannot dismiss an appeal for non-prosecution simpliciter without examining the merits;

19.2. That the Court is not bound to adjourn the matter if both the appellant or his counsel/lawyer are absent;

19.3. That the court may, as a matter of prudence or indulgence, adjourn the matter but it is not bound to do so;

19.4. That it can dispose of the appeal after perusing the record and judgment of the trial court;

19.5. That if the accused is in jail and cannot, on his own, come to court, it would be advisable to adjourn the case and fix another date to facilitate the appearance of the appellant-accused if his lawyer is not present, and if the lawyer is absent and the court deems it appropriate to appoint a lawyer at the State expense to assist it, nothing in law would preclude the court from doing so; and

19.6. That if the case is decided on merits in the absence of the appellant, the higher court can remedy the situation."

In the light of the principles culled out in the judgment of the Hon'ble Apex Court cited supra, it is crystal clear that no doubt, the Court can decide the matter even in the absence of counsel, but, only criteria is that the case should be decided on merits in the absence of the counsel. In the light of the decision cited supra, the main Criminal Revision Case itself is taken up and disposed of on merits, after hearing the learned counsel appearing for the petitioners and also after perusing the materials available on record.

5. The learned counsel for the petitioners mainly contended that the Court below ought not to have allowed the application for condonation of delay without assigning any reason. The learned counsel for the petitioners also submitted that the order passed by the Court below is a cryptic order without disclosing any reasons for allowing the application for condonation of delay and therefore, it is liable to be set aside.

6. In this context, it is necessary to look into the order passed by the Court below, which is extracted hereunder:-

" Heard perused consider the reasons stated by petitioner in condone delay petition is justifiable. The respondent raised formal objection considering the facts and circumstances, this court is inclined to condone the delay, but at the same time the respondent should equally be compensated, hence this petition is allowed on

payment of cost of Rs.500/- to respondent on or before 5.3.2014. Call on 05.03.2014."

7. A cursory perusal of the order passed by the Court below would indicate that the Court below has not assigned any reason for condoning the delay, but, while allowing the said application has simply stated that the accused Nos.1 and 2 have raised formal objection, without considering the detailed counter filed by the accused Nos.1 and 2 and therefore, the order passed by the Court below is a cryptic order, which practice is deprecated by this Court as well as the Honourable Supreme Court. The Court below need not write elaborate judgment meeting out all the relevant or irrelevant pleadings raised by the both sides, but the Court below is expected to adduce some reason for its logical conclusion after analysing the pleadings and other evidences let in by both sides. In the present case, as stated supra, no reason at all was assigned by the Court below for condoning the delay of 222 days in filing the complaint.

8. It is relevant to refer to the decision of the Hon'ble Supreme Court reported in (Secretary and Curator, Victoria Memorial Hall vs. Howrah Ganatantrik Nagrik Samity and others) (2010) 3 SCC 732 wherein in para Nos. 41 and 42, it was held as follows:-

"41. Reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, it becomes lifeless. Reasons substitute subjectivity by objectivity. Absence of reasons renders the order indefensible/ unsustainable particularly when the order is subject to further challenge before a higher forum (vide Raj Kishore Jha vs. State of Bihar, SCC p.527, para 19; Vishnu Dev Sharma vs. State of UP; SAIL v. STO, State of Uttanchal vs. Sunil Kumar Singh Negi, U.P. SRTC vs. Jagdish Prasad Gupta, Ram Phal vs. State of Haryana, Mohd Yusuf vs. Faij Mohammad and State of H.P. vs. Sada Ram)

42. Thus, it is evident that the recording of reasons is a principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making. The person who is adversely affected may know, as to why his application has been rejected."

9. It is evident from the decision of the Hon'ble Supreme Court that every judicial order must be supported by reasons, recorded in writing, because such reasons recorded in writing ensures transparency and fairness in decision making. In this background, when the impugned order is looked into, the Court below has not

assigned any reasons for condonation of the delay and therefore, the argument of the learned counsel for the petitioners is sustainable and acceptable.

10. Without mentioning on the merits of the case, suffice to state the Lower Court will consider afresh and pass order on merits, giving reasons, after giving opportunity to both sides.

11. In the result, this Criminal Revision Case is allowed. The order dated 05.02.2014 passed in M.P.No. 2417 of 2013 on the file of the learned VII Metropolitan Magistrate, George Town, Chennai, is set aside and the matter is remitted back to the learned VII Metropolitan Magistrate, George Town, Chennai, who intturn shall issue fresh notice to the concerned parties and after affording an opportunity of hearing to both parties, shall decide the matter afresh and pass orders, on merits and in accordance with law, as expeditiously as possible.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

paa

To

1.The VII Metropolitan Magistrate,
George Town chennai

2.Do- Thro The Cheif Metropolitan Magistrate
Egmore, Chennai-8

Crl.R.C. No. 192 of 2015

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