

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03-06-2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Crl.R.C. No. 228 of 2015

V.M.Palanisamy .. Petitioner / Petitioner/ Complainant

Versus

Muthukuttai @ Muthusamy .. Respondent / Respondent/ Accused

Criminal Revision Case filed under Section 397 (1) read with 401 of Cr.P.C. against the order dated 03.03.2015 passed in unnumbered petition No. /2015 on the file of the Judicial Magistrate, Fast Track Court @ Magistrate Level No.I, Erode.

For Petitioner : Mr. I.C.Vasudevan

For Respondent : No Appearance

ORDER

The petitioner has come forward with this Criminal Revision Case seeking to set aside the order dated 03.03.2015 passed in unnumbered petition No. /2015 on the file of the Judicial Magistrate, Fast Track Court @ Magistrate Level No.I, Erode.

2. The case of the petitioner/complainant is that on 26.10.2005, the respondent has borrowed a sum of Rs.5,00,000/- as hand loan from the petitioner by issuing a post-dated cheque. When the complainant has presented the cheque for collection before the State Bank of India, Chinnadharapuram Branch, on 26.12.2005, the same returned dishonoured with an endorsement "Account Closed". The complainant has issued a statutory notice on 17.01.2006 calling upon the respondent to pay the cheque amount. Even after the issuance of notice, the respondent has not chosen to pay the cheque amount and hence, the complaint. The learned Judicial Magistrate, Fast Track Court @ Magisterial Level, Karur, on finding that the alleged cheque was dishonoured by the Bank, which is not within their territorial jurisdiction, has ordered to return the complaint to the complainant/petitioner for presenting the same before the proper Court having jurisdiction within 30 days from the date of return. Since, the petitioner was bed ridden due to jaundice, he could not contact his counsel immediately and therefore, he instructed the counsel to file the complaint before the proper Court. After recovery from his illness, when the petitioner contacted his counsel, he came to know that there is a delay of 42 days in representing the above said complaint. Hence, seeking to condone the delay of 42 days in representing the complaint, the petitioner has filed a petition under Section 473 Cr.P.C. before

the learned Judicial Magistrate, Fast Track Court @ Magistrate Level-I, Erode. The learned Magistrate by impugned order dated 03.03.2015 has rejected the private complaint under Section 138 of Negotiable Instruments Act, without even numbering the petition. Aggrieved against the same, this Criminal Revision Case is filed.

3. Today, when the matter is taken up, Mr.I.C.Vasudevan, learned counsel appearing for the petitioner submitted that as per the decision of the Hon'ble Apex Court reported in 2014(4) CTC 666, Dashrath Rupsingh Rathod vs. State of Maharashtra and another, the complaint under Section 138 of Negotiable Instruments Act should be presented before the proper court having jurisdiction within 30 days from the date of return, but, in this instant case, since the petitioner was suffering from jaundice, he was unable to represent the complaint in time, but, without taking into consideration of the said fact, the private complaint has been rejected as time barred by relying on the said judgment of the Hon'ble Apex Court. The learned counsel has relied on the unreported judgment of this Court in CrI.O.P.Nos.6914 and 6925 of 2015, dated 20.03.2015, wherein, in an identical circumstances, this Court has condoned the delay in representation and has set aside the order of the Lower Court and directed the Lower Court to receive the complaint and number it, if it is otherwise in order.

4. Notice of motion was ordered by this Court on 18.03.2015. Though, the notice was served on the respondent, neither, he has chosen to appear in person nor represented by any counsel. The name of the respondent is printed in the cause list, but, even today, there is no representation on behalf of the respondent. Hence, I have heard the learned counsel for the petitioner and I am inclined to dispose of the main Criminal Revision Case itself by passing the following order.

5. On a perusal of the unreported judgment of this Court in CrI.O.P.Nos.6914 and 6925 of 2015, dated 20.03.2015, it is seen that in an identical circumstances, this Court has condoned the delay in representation and has set aside the order of the Lower Court and directed the Lower Court to receive the complaint and number it, if it is otherwise in order. Following the said judgment of this Court and also taking into consideration of the fact that as per the judgment of the Hon'ble Apex Court reported in 2014(4) CTC 666, Dashrath Rupsingh Rathod vs. State of Maharashtra and another, the complaint was returned for presentation before the proper Court having jurisdiction within 30 days from the date of return, but, due to the reason that the petitioner was suffering from jaundice and he was bedridden, there was a delay of 42 days in representing the complaint before the learned Judicial Magistrate, Fast Track Court @ Magistrate Level-I, Erode, hence, he has filed a petition seeking to condone the delay, but, without appreciating the same in a proper perspective, the learned Magistrate has rejected the petition seeking to condone the delay in representation, I am inclined to allow the Criminal Revision Case.

6. In the result, this Criminal Revision Case is allowed and the order passed by the learned Judicial Magistrate, Fast Track Court @ Magistrate Level No.I, Erode, is set aside and the learned

Judicial Magistrate, Fast Track Court @ Magistrate Level No.1,
Erode, is directed to receive the complaint and number it, if it is
otherwise in order. No costs.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

paa

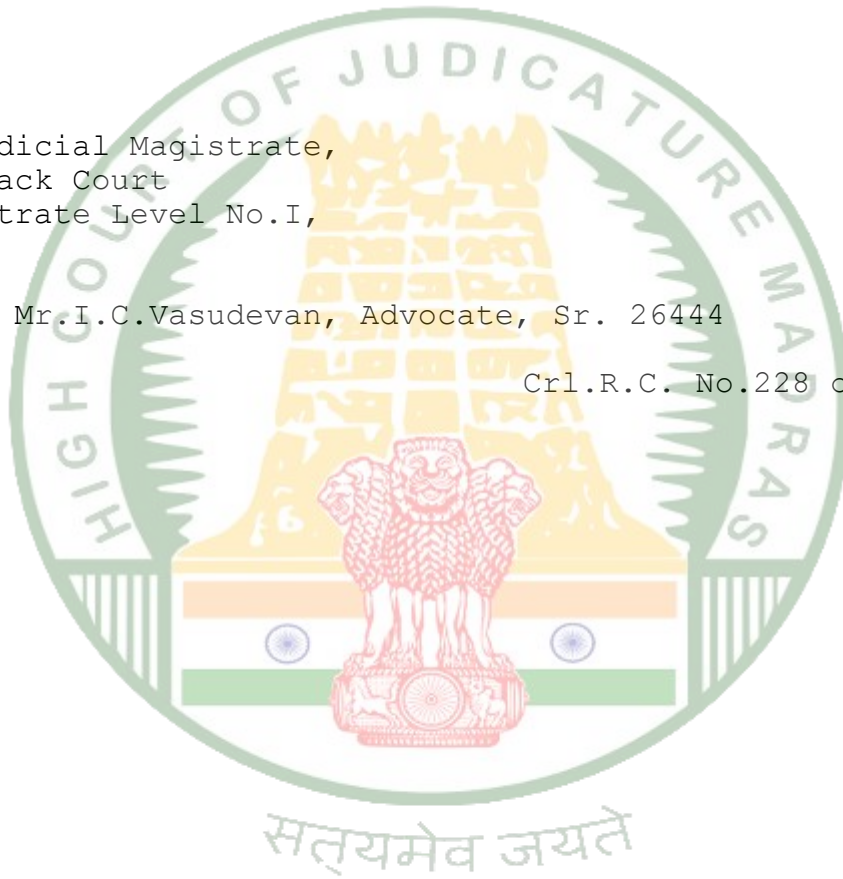
To

The Judicial Magistrate,
Fast Track Court
@ Magistrate Level No.I,
Erode.

1 cc to Mr.I.C.Vasudevan, Advocate, Sr. 26444

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GR (CO)
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