

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.6.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 1250 of 2010

Ramachandran

.. Petitioner/complainant

Versus

J.Govindaraj
Managing Trustee
Unique Academy
300, Cherry Road
Near PWD Office
Salem.

.. Respondent/ Accused

Criminal Revision Petition filed under Section 397 and 401 of Cr.P.C. against the order dated 08/10/2010 in Crl.M.P. No. 1214 of 2010 in unnumbered C.C. No. of 2010 on the file of the learned Judicial Magistrate, Denkanikottai

For Petitioner : Mr. R.Selvakumar
For Respondent : No appearance

ORDER

The petitioner has come forward with this Criminal Revision Petition against the order dated 08.10.2010 in Crl.M.P. No. 1214 of 2010 in unnumbered C.C. No. of 2003 on the file of the learned Judicial Magistrate, Denkanikottai. By the said order dated 08.10.2010, the Court below dismissed the petition filed by the petitioner to condone the delay of 40 days in filing the Calander case by the petitioner.

2. The petitioner herein has filed the unnumbered Calander Case of 2010 before the Court below under Section 200 Cr.P.C. read with Section 138 of the Negotiable Instrument Act contending that the respondent herein borrowed Rs.1,00,000/- and in order to repay the same, he issued a post dated cheque drawn on Bank of India, Salem, Swarnapuri Branch, dated 27.09.2008 for Rs.1,00,000/- and on presentation, the cheque was dishonoured. After issuing the statutory notice on 21.12.2009, the petitioner filed the above said unnumbered Calander Case before the Court below along with petition for condoning the delay of 40 days. But the condone delay petition was dismissed by the court below. Against which, the present Criminal Revision Petition is filed.

3. This Court ordered notice to the respondent. The respondent was served. But there is no representation on behalf of the respondent. Considering the fact that the Criminal Revision case is pending from 2010, the Criminal Revision case is taken up for hearing and disposed of on merits.

4. The learned counsel for the petitioner would contend that the petition filed by the petitioner to condone the delay of 40 days in preferring the case has been dismissed because of the absence of the advocate and his absence is neither willful nor wanton. The learned counsel would also contend that the petitioner's advocate is regularly appearing before the Court below and only on 08.10.2010, he was absent. But the court below, without taking into consideration the fact that the delay was only 40 days, dismissed the petition.

5. Heard the learned counsel for the petitioner and perused the materials placed on record.

6. Admittedly, the petitioner has filed petition under clause (b) of Section 142 of Cr.PC seeking to condone the delay of 40 days. The reasons assigned by the petitioner for the delay in preferring the case in time was that the accused requested the complainant to represent the cheque again during first week of 2009 December. In view of the said request, the petitioner again represented the cheque. However, the same was returned. Since the respondent has not come forward to repay the amount, he presented the Calander case, which led to the delay. Such a reason assigned by the respondent cannot be ignored. Since the delay was only 42 days, and the petition was dismissed for default because of the absence of advocate and such absence is also neither willful nor wanton, the Court below ought to have given one more opportunity to the petitioner and the petition should not have been dismissed for default. Further, the case has not been dismissed on merits. As per the judgment of the Hon'ble Supreme Court reported in (2013) 3 SCC 721 [K.S.Panduranga vs. State of Karnataka], the case should not be dismissed for default. As the Court below has not even passed the order on merits, the revision is liable to be allowed.

7. In view of such circumstances, the order dated 08.10.2010 in CrI.MP.No.1214 of 2010 is set aside and the matter is remitted back to the Court below. The Court below shall consider the petition filed by the petitioner and pass orders on merits and in accordance with law, after giving notice to the respondent and after affording opportunity to defend the case, without taking note of the observation made by the Court below.

In the result, the Criminal Revision case is allowed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Judicial Magistrate, Denkanikottai.

2.The Chief Judicial Magistrate, Krishnagiri.

RSI (CO)

En 07.07.15

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