

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2015

CORAM

The Hon'ble Mr. Justice R.S.Ramanathan

CrI.O.P.No.23635 of 2010

and M.P.No.1 of 2010

C.Manivasagam

...Petitioner

vs.

K.Thirunavukkarasu

...Respondent

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code praying to call for the records in relating to the STR.No.334 of 2006 on the file of Judicial Magistrate No.II, Chidambaram and quash the same.

For Petitioner : Mr.P.R.Thiruneelakandan

For Respondent : Mr.R.Sethuvarayan

O R D E R

This petition is filed by the accused in STC.No.334/2006 on the file of the Judicial Magistrate No.II, Chidambaram and seeks to quash the said proceedings.

2. The learned counsel for the petitioner submitted that the respondent/complainant filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 against the petitioner, which is barred by limitation. It is submitted that statutory notice was dated 09.07.2002, which was received by the petitioner/accused and he issued a reply notice dated 19.07.2002. He further submitted that in the complaint, even the receipt of notice by the petitioner was not stated and the complaint was filed during December 2002 and it was taken cognizance only in December 2006 and the complaint was represented with a delay of 1120 days, but no notice was issued to the petitioner while condoning the delay in representing the complaint. He also submitted that the complaint was filed beyond the period of limitation prescribed under Section 142 of the Negotiable Instruments Act, 1881 and prior to the unamended proviso to Section 142, the Court has no power to condone the delay and relied upon the judgments in A.Rahamathullah @ Maulana v. P.A.K.Manoharan [CDJ 2015 MHC 781], O.P.Chirania and Another v. The Director of Lotteries and

Deputy Secretary to Government of Haryana [Crimes (HC) 3 (2009) 177] and Prakash Chandra Sharma v. Kaushal Kishore [1980 CRI.L.J. 578]. The learned counsel for the petitioner submitted that prior to the introduction of proviso to Section 142 of the Negotiable Instruments Act, 1881 by the amended Act No.55 of 2002, the Court has no power to receive complaint beyond the period of 30 days from the date of arising of cause of action and in this case, even according to the complaint, the cause of action arose after 15 days from the date of receipt of statutory notice, namely 01.08.2002 and the complaint was filed only in December 2002 and therefore, the Court has no power to receive complaint or to condone the delay by invoking the proviso to Section 142, which came into force from 06.02.2003. He therefore submitted that even according to the endorsement found in the certified copy of sworn statement, the case was taken only in the year 2006, the complaint was represented with a delay of 1120 days and no notice was given to the petitioner while condoning the delay of 1120 days in representing the complaint and hence, violated the right accrued to the petitioner and therefore, even assuming that the delay was condoned by the Court, the same is not legally valid as no notice was given to the petitioner/accused.

3. I am unable to accept the contention of the learned counsel for the petitioner. It is seen from the complaint copy filed along with the application that there is a seal dated 08.08.2002 and therefore, one can presume that the complaint was filed on 08.08.2002 and in that case, the complaint was filed within the period of limitation prescribed under Section 142 unamended Act and therefore, the argument of the learned counsel for the petitioner that the complaint was filed beyond the period of 30 days cannot be accepted having regard to the seal found in the complaint. The contention of the learned counsel for the petitioner that the complaint was taken cognizance only in the year 2006 and that was beyond the period of limitation and therefore, the Court has no power to condone the delay of 1120 days in representing the complaint and relied upon the judgment in M.A.Abdul Khuthoos v. M/s.Ganesh and Coy Oil Mills [1999 CRI.L.J. 3432(1)]. It is seen from the said judgment that the complaint was filed without the signature of the complainant and it was represented beyond the period of one month from the date of cause of action and in that case, it was held that when the complaint was filed without the signature of the complainant and when it was returned and represented after a period of one month, the complaint is barred by limitation. In this case, the complaint was filed with the signature of the complainant on 08.08.2002 and thereafter, it was returned for some reason and it was represented with a delay of 1120 days and it was filed with an application to condone the delay and that was ordered. According to me, failure on the part of Court to issue notice on the accused cannot be a ground to challenge the proceedings, as the right to condone the delay in representing is between the Court and the petitioner who filed the application and the petitioner has no say over the same.

4. Further, the judgments relied on by the learned counsel for the petitioner cannot be applied to the facts of this case. In A.Rahamathullah @ Maulana v. P.A.K.Manoharan [CDJ 2015 MHC 781], this Court held that no petition was filed to condone the delay and no explanation was offered by the Court below to condone the delay without notice to the accused and on that ground, the petition was allowed. Here, as stated supra, the complaint was filed within time and there was delay in representation and while condoning the delay in representation, notice was not issued and therefore, the said judgment cannot be applied to the facts of this case. In the judgment in O.P.Chirania and Another v. The Director of Lotteries and Deputy Secretary to Government of Haryana [Crimes (HC) 3 (2009) 177], it has been held that the position post 2002 might be different in view of the amendment, but the legislative intent in interpreting Section 142 of the Act anterior to the amendment cannot be gleaned therefrom. In the judgment in Prakash Chandra Sharma v. Kaushal Kishore [1980 CRI.L.J. 578], it has been held that without condoning the delay, the Court cannot take cognizance of the case. In this case, there was no delay in filing the complaint, as the complaint was filed on 08.08.2002 and there was delay in representation and that was condoned and hence, the judgment relied on by the learned counsel for the petitioner cannot be applied to the facts of this case.

5. In the result, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1.The Judicial Magistrate No.II,
Chidambaram.

2.do thro' The chief Judicial magistrate,
Cuddalore.

+1 cc to Mr.P.R.Thiruneelakandan, Advocate,SR.17165

+1 cc to Mr.r.Sethuvarayar, Advocate,SR.17184.

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